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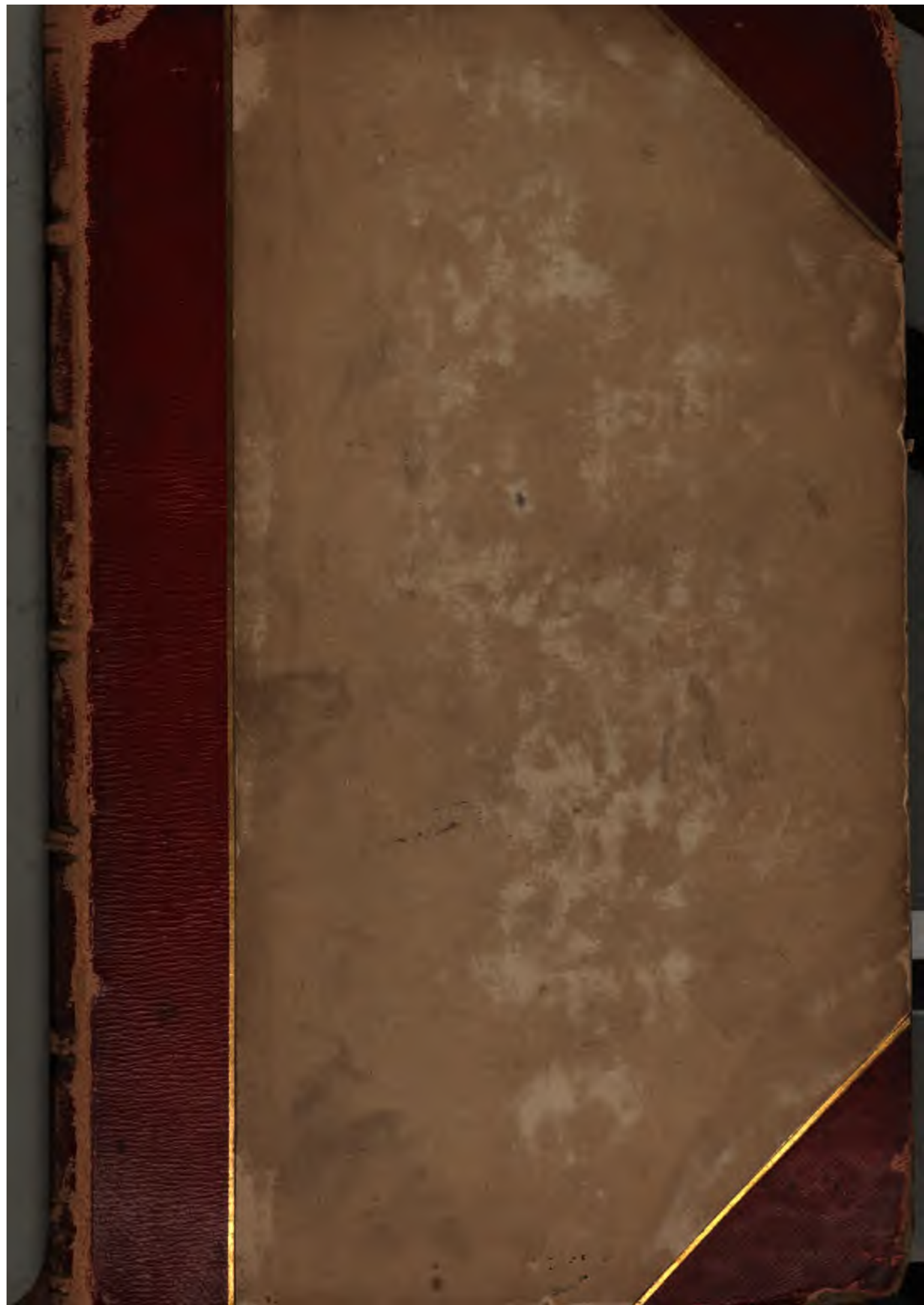
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**THE**  
**HARLEIAN MISCELLANY.**

**VOL. V.**

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*T. Plummer, Printer, Seething Lane.*

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THE  
**HARLEIAN MISCELLANY;**  
OR, A  
COLLECTION  
OF  
SCARCE, CURIOUS, AND ENTERTAINING  
**PAMPHLETS AND TRACTS,**  
*AS WELL IN MANUSCRIPT AS IN PRINT,*  
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VOL. V.

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LONDON  
PRINTED FOR ROBERT DUTTON, GRACECHURCH-STREET.

—  
1810.



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*Hei mihi quam misere rugit leo, lilia languent,  
Heu, lyra, quam maestos pulsat hiberna sonos.*

Printed at London, according to order, by Richard Heron, 1644. Quarto, containing twenty-two pages . . . . . 443

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Leyden, by profession, and his companions the Anabaptists, pleased themselves, after they were become masters of that city. You shall here likewise have the issue of the whole mock-show.

*Quidam, ut imperium subvertant, libertatem proferunt; si  
subverterint, ipsam aggredientur.* C. TACITUS.  
*Malignitati falsa species libertatis inest.*

Idem, Histor. Lib. 1.

ELEUTHEROPOLI. Anno ANABAPTISTOMANIAE, C.XIIX.

Imprimatur,

James Cranford.

London, printed for J. S. and L. C. 1644. Quarto, containing thirty-two pages . . . . . 455

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Fairfax; wherein are many mysteries of state, tending to the justification of that cause, for which Sir Thomas Fairfax joined battle that memorable day, clearly laid open; together with some annotations thereupon. Published by special order of the parliament. London, printed for Robert Bostock, dwelling in St. Paul's Church-yard, at the sign of the King's head, 1646. Quarto, containing seventy-two pages . . . . . 514

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THE  
HARLEIAN MISCELLANY.

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AN  
HONOURABLE AND WORTHY SPEECH,

*Spoken in the High Court of Parliament,*

BY MR. SMITH OF THE MIDDLE-TEMPLE,

October 28, 1641,

Concerning the Regulating of the King's Majesty's Prerogative, and the Liberties of the Subjects. With a Motion for the speedy Redress of all Grievances, under which the Church and State do lie.

London, printed by Bernard Alsop, 1641, Quarto, containing eight Pages.

*Mr. Speaker,*

THE last time we assembled, we sat like a college of physicians, upon the life and death of three great patients; whose bleeding hearts lay prostrate before us, and we arrived at that critical minute, either to receive relief, or eternal destruction. The three fortunate nations were presented to us, in all their distractions, and grown to such a superlative in their miseries, that, like nursing mothers bereaved of their tender infants, they were careless of what might happen to them, *Quis perdidit libertates*. These three kingdoms, whose peace and amity filled the remaining world with envy and emulation, and were, like that happy trinity of faith, hope, and charity, in a perfect union, had but now their swords edged to each others confusion. *O scelus hominum!* Height of impiety! *Kai su teknon!* said Cæsar in the senate; it was not his death that grieved him, but that his son should advance his hand to his slaughter. How many sons and Nerocs had we, whose earnest endeavours were to rip up their mother's womb, and, like vipers, eat through her bowels, and to lay desolate their father's house:

——— *Quis talia fando*  
*Temperet a lachrymis?* ———

And yet all this had been but a prologue to our tragedy, had not God Almighty pleased to interpose his hand, and to have been a pillar

of fire betwixt us and our captivity, and to have wrought our deliverance, by his great instrument, the parliament; whose constant labour it hath been, for this year past, to create a true understanding and firm peace between the nations; which I hope is so accomplished, that it is not in the power of the devil, or all his works, ever to dissolve it. This, I say, was the work of our last sitting. Give me leave, sir, I beseech you, to deliver what I conceive convenient to be of this: 'To give God his due, to establish rights between king and people, and to compose things amongst ourselves.' That we may give God his due, we must advance his worship, and compel obedience to his commands, wherein he hath been so much neglected. Honour and riches have been set up for Gods, in competition with him; idolatry and superstition have been introduced, even into his house, the church, and he expelled; his name hath been blasphemed, and his day profaned, by the authority of that unlawful book of sports; and those, who would not tremble thus to dishonour God, would not scruple to do it to their parents, or injure their neighbours, either by murder of themselves, or names, or by adultery, David's great crimes: They have not only robbed God of his honour, but men of their estates, and of part of themselves; members and ears have been set to sale, even to the deforming of that creature, whom God had honoured with his own image; that they might colour this their wickedness, perjury and false testimony have been more frequent with them, than their prayers; and all this proceeded out of an inordinate desire of that which was their neighbours; and thus God in all his commandments hath been abused. Can we then wonder at his judgments, or think he could do less to right himself upon such a rebellious people than he hath?

I beseech you, sir, let us do something to seat him in his throne, and worship all with one mind, and not that every one should go to God a way by himself; this uncertainty staggers the unresolved soul, and leads it into such a labyrinth, that, not knowing where to fix, for fear of erring, sticks to no way; so dies before it performs that, for which it was made to live: Uniformity in his worship is that which pleaseth him, and if we will thus serve him, we may expect protection from him.

The next thing that I conceive fit to be considered, is, to cause the rights, both of the king and people, truly to be understood; and in this, to give that authority to the prerogative which legally it hath, and to uphold the subjects liberty from being minced into servitude.

That the king should have a prerogative, is necessary for his honour; it differences him from his people; but, if it swells too high, and makes an inundation upon his subjects liberty, it is no longer then to be stiled by that name: the privilege of the subject is likewise for his majesty's high honour. King David gloried in the number of his people; and Queen Elisabeth delivered in a speech in parliament, that the greatness of a prince consisted in the riches of his subjects; intimating, that then they stood like lofty cedars about him to defend him from the storms of the world, and there were ample demonstrations of that, in that renowned queen's reign; but what encouragement can they have, either to increase their numbers, or estates, unless they may have protection both

for themselves, and estates? therefore, the privilege and greatness of the subjects are relatively for the honour of the prince.

Prerogative and liberty are both necessary to this kingdom; and, like the sun and moon, give a lustre to this benighted nation, so long as they walk at their equal distances; but when one of them shall venture into the other's orb, like those planets in conjunction, they then cause a deeper eclipse. What shall be the compass then, by which these two must steer? Why, nothing but the same by which they are, the law; which if it might run in the free current of its purity, without being poisoned by the venomous spirits of ill-affected dispositions, would so fix the king to his crown, that it would make him stand like a star in the firmament, for the neighbour-world to behold and tremble at.

That they may be the better acted, I shall humbly desire, that after so many times, that great charter, the light of the law, may be reviewed, the liberty of the subject explained, and be once more confirmed; and penalties imposed on the breakers, and let him die unto the bargain, that dares attempt the act.

The last thing, that falls into consideration, is, to set things right amongst ourselves, the subjects of England; and in this, so to provide, that the *Maccabees* of the times may not, like great jacks in a pool, devour their inferiors, and make poverty a pavement for themselves to trample on. This hath been a burthen we have long groaned under; for if a great one did but say the word, it was sufficient to evict my right, even from my own inheritance. They had both law and justice so in a string, that they could command them with a nod; and thus people have been disinherited of their common right, the law, which is as due to them, as the air they breathe in.

On the other side, we must take care, that the common people may not carve themselves out justice, by their multitudes. Of this we have too frequent experience, by their breaking down inclosures, and by raising other tumults, to as ill purposes; which if they be not suddenly suppressed, to how desperate an issue this may grow, I will leave to your better judgments. My humble motion, therefore, is, that an intimation may go forth, unto the country, to wish those that are injured to resort to courts of law. And, if there they fail of justice, in parliament they may be confident to receive it.



## CASES OF TREASON.

WRITTEN BY

SIR FRANCIS BACON, KNIGHT,

HIS MAJESTY'S SOLICITOR GENERAL.

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### CHAP. I.

**W**HERE a man doth compass or imagine the death of the king, the king's wife, the king's eldest son, and heir apparent, if it appear by any overt-act, it is treason.

Where a man doth violate the king's wife, the king's eldest daughter, unmarried, the wife of the king's eldest son, and heir apparent, it is treason.

Where a man doth levy war against the king in the realm, it is treason.

Where a man is adherent to the king's enemies, giving them aid and comfort, it is treason.

Where a man counterfeiteth the king's great seal, privy signet, sign manual, it is treason; likewise his money.

Where a man bringeth into this realm false money, counterfeit to the likeness of English, with intent to merchandise or make payment thereof, and knowing it to be false money, it is treason.

Where a man counterfeiteth any coin current in payment within this realm, it is treason.

Where a man doth bring in any money, being current within the realm, the same being false and counterfeit, with intent to utter it, and knowing the same to be false, it is treason.

Where a man doth clip, waste, round, or file any of the king's money, or any foreign coin, current by proclamation, for gain's sake, it is treason.

Where a man doth any way impair, diminish, falsify, scale, or lighten money current by proclamation, it is treason.

Where a man killeth the chancellor, the treasurer, the king's justices in Eyre, the king's justices of assizes, the justices of Oyer and Terminer, being in their several places, and doing their offices, it is treason.

Where a man procureth or consenteth to treason, it is treason.

Where a man doth persuade or withdraw any of the king's subjects from his obedience, or from the religion of his majesty established, with intent to withdraw any from the king's obedience, it is treason.

Where a man is absolved, reconciled, or withdrawn from his obedience to the king, or promiseth obedience to any foreign power, it is treason.

Where any jesuit, or any other priest ordained since the first year of the reign of Queen Elisabeth, shall come into or remain in any part of this realm, it is treason.

Where any person, being brought up in a college of jesuits, or seminaries, shall not return within six months after proclamation made, and, within two days after his return, submit himself to take the oath of supremacy, if otherwise he do return, and not within six months after proclamation made, it is treason.

Where a man, committed for treason, doth voluntarily break prison, it is treason.

Where a jailer doth voluntarily permit a man committed for treason to escape, it is treason.

Where a man relieveth or comforteth a traitor, and knoweth of the offence, it is treason.

Where a man doth affirm or maintain any authority of jurisdiction spiritual, or doth put in ure or execute any thing for the advancement or setting forth thereof, the third time, it is treason.

Where a man refuseth to take the oath of supremacy, being tendered by the bishop of the diocese, if he be any ecclesiastical person; or by commission out of the chancery, if he be a temporal person; such offence the second time is treason.

## CHAP. II.

### *The Punishment, Trial, and Proceedings in Cases of Treason.*

IN treason, the corporal punishment is by drawing on a hurdle from the place of the prison to the place of execution, by hanging and being cut down alive, bowelling and quartering, and in women, burning.

In treason, there ensueth a corruption of blood in the line ascending and descending.

In treason, lands and goods are forfeited, and inheritances, as well intailed as fee simple, and the profits of estates for life.

In treason, the escheats go to the king, and not to the lord of the fee.

In treason, the land forfeited shall be in the king's actual possession, without office.

In treason, there be no accessories, but all are principals.

In treason, no sanctuary, nor benefit of clergy, or peremptory challenge, is allowed.

In treason, if the party stand mute, yet nevertheless judgment and attainder shall proceed all one as upon verdict.

In treason, no council is to be allowed, nor bail permitted to the party.

In treason, no witnesses shall be received upon oath for the party's justification.

In treason, if the fact be committed beyond the seas, yet it may be tried in any county where the king will award his commission.

In treason, if the party be *non sanæ memoriæ*, yet if he had formerly confessed it before the king's council, and that it be certified that he was of good memory at the time of his examination and confession, the court may proceed to judgment, without calling or arrainging the party.

In treason, the death of the party before conviction dischargeth all proceedings and forfeitures.

In treason, if the party be once acquitted, he should not be brought in question again for the same fact.

In treason, no new case not expressed in the statute of 25 Edward III, or made treason by any special statute since, ought to be judged treason, without consulting with the parliament.

In treason, there can be no prosecution but at the king's suit, and the king's pardon dischargeth.

In treason, the king cannot grant over to any subject power and authority to pardon it.

In treason, a trial of a peer of the kingdom is to be, by special commission, before the lord high steward, and those that pass upon him to be none but peers: the proceeding is with great solemnity, the lord steward sitting under a cloth of state, with a white rod of justice in his hand, and the peers may confer together, but are not any ways shut up; and are demanded, by the lord steward, their voices one by one, and the plurality of voices carries it.

In treason, it hath been an ancient use and favour, from the kings of this realm, to pardon the execution of hanging, drawing, and quartering; and to make warrant for their beheading.

The proceeding, in case of treason, with a common subject, is in the king's bench, or by commission of Oyer and Terminer.

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### CHAP. III.

#### *Cases of Mispriison of Treason.*

WHERE a man concealeth high treason only, without any consorting or abetting, it is mispriison of treason.

Where a man counterfeiteth any foreign coin of gold or silver, not current in the realm, it is mispriison of treason.

Where a man fixes an old seal to a new patent it is mispriison of treason.

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CHAP. IV.

*The Punishment, Trial, and Proceedings in Cases of Misprision of Treason.*

THE punishment of misprision of treason is by perpetual imprisonment, loss of the issues and profits of their lands, during life, and loss of goods and chattels.

The proceeding and trial is, as in cases of high treason.  
In misprision of high treason, bail is not admitted.

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CHAP. V.

*Cases of Petty Treason.*

WHERE a servant killeth his master; the wife the husband; the spiritual man his prelate, to whom he is subordinate, and oweth faith and obedience; it is petty treason.

Where a son killeth the father or mother, it hath been questioned, Whether it be petty treason, and the late experience and opinion seemeth to sway to the contrary, though against law and reason in my judgment.

Where a servant killeth his, or her master or mistress, after they are out of service, it is petty treason.

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CHAP. VI.

*The Punishment, Trial, and Proceedings in Cases of Petty Treason.*

IN petty treason, the corporal punishment is by drawing on an hurdle, and hanging, and in a woman, burning.

In petty treason, the forfeiture is the same with the case of felony.  
In petty treason, all accessories are but in the case of felony.

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CHAP. VII.

*Cases of Felony.*

WHERE a man committeth murder, or homicide of malice prepensed, it is felony.

Where a man committeth murder, that is breaking of an house, with an intent to commit felony, it is felony.

Where a man committeth man-slaughter, that is homicide of sudden heat, and not of malice prepensed, it is felony.

Where a man rideth armed with a felonious intent, it is felony.

Where a man doth maliciously and feloniously burn any man's house, it is felony.

Where a man doth maliciously, &c. burn corn upon the ground, or in stack, it is felony.

Where a man doth maliciously cut out another man's tongue, or put out his eyes, it is felony.

Where a man robbeth or stealeth, viz. taketh away another man's goods, above the value of twelve pence, out of his possession, with intent to conceal it, it is felony.

Where a man embezzleth and withdraweth any of the king's records at Westminster, whereby a judgment is reversed, it is felony.

Where a man, having the custody of the king's armour, ammunition, or other habiliments of war, doth maliciously convey away the same, it is felony, if it be to the value of twenty shillings.

Where a servant hath goods of his master's delivered unto him, and goeth away with them, it is felony.

Where a man conjures, or invokes wicked spirits, it is felony.

Where a man doth use or practise witchcraft, whereby any person shall be killed, wasted, or lamed, it is felony.

Where a man practiseth any witchcraft, to discover treasure hid, or to discover stolen goods, or to provoke unlawful love, or to impair or hurt any man's cattle or goods the second time, having been once before convicted of like offence, it is felony.

Where a man useth the craft of multiplication of gold or silver, it is felony.

Where a man receiveth a seminary priest, knowing him to be such a priest, it is felony.

Where a man taketh away a woman against her will, not claiming her as his ward or bond-woman, it is felony.

Where a man or woman marrieth again, his or her former husband or wife being alive, it is felony.

Where a man committeth buggery, with man or beast, it is felony.

Where any persons, above the number of twelve, shall assemble themselves with intent to put down inclosures, or bring down prices of victuals, &c. and do not depart after proclamation, it is felony.

Where a man shall use any words to encourage or draw any people together, *ut supra*, and they do assemble accordingly, and do not depart after proclamation, it is felony.

Where a man, being the king's sworn servant, conspireth to murder any lord of the realm, or any privy-counsellor, it is felony.

Where a soldier hath taken any parcel of the king's wages, and departeth without license, it is felony.

Where a recusant, which is a seducer, and persuader, and inciter of the king's subjects against the king's authority in ecclesiastical causes, or a persuader of conventicles, or shall refuse to abjure the realm, it is felony.

Where vagabonds be found in the realm, calling themselves Egyptians, it is felony.

Where a purveyor doth take without warrant, or otherwise doth offend against certain special laws, it is felony.

Where a man hunts in any forest, park, or warren, by night or by day, with vizard, or other disguisements, and is examined thereof, and concealeth his fact, it is felony.

Where one stealeth certain kind of hawks, it is felony.

Where a man committeth forgery the second time, having been once before convicted, it is felony.

Where a man transporteth rams, or other sheep, out of the king's dominions the second time, it is felony.

Where a man, being imprisoned for felony, breaks prison, it is felony.

Where a man procureth, or consenteth to felony to be done, it is felony, as to make him accessory before the fact.

Where a man receiveth or relieveth a felon, it is felony, as to make him accessory after the fact.

Where a woman, by the constraint of her husband, in his presence, joineth with him in committing of felony, it is not felony in her, neither as principal, nor as accessory.

Homicide, or the killing of a man, is to be considered in four kinds, chance-medley, *se defendendo*, man-slaughter, and wilful murder.

## CHAP. VIII.

### *The Punishment, Trial, and Proceedings in Cases of Felony,*

IN felony, the corporal punishment is hanging, and it is doubtful, whether the king may turn it into beheading in the case of a peer, or other person of dignity; because, in treason, the striking off the head is part of the judgment, and so the king pardoneth the rest; but in felony, it is no part of the judgment, and the king cannot alter the execution of law; yet precedents have been both ways: If it be upon indictment, the king may; but upon an appeal he cannot.

In felony there followeth corruption of blood, except it be in cases made felony by special statutes; with a proviso, that there shall be no corruption of blood.

In felony, lands in fee-simple, and goods and chattels are forfeited, and the profits of estates for life are likewise forfeited, but not lands entailed: And by some customs, lands in fee-simple are not so forfeited:

The father to the bough,  
The son to the plough.

as in gavelkind, in Kent, and other places.

In felony, the escheats go to the lord of the fee, and not to the king, except he be lord: But profits for the estates for lives, or in tail, during the life of tenant in tail, go to the king; and the king hath likewise *curiam, & diam, & vastum*.



In felony, lands are not in the king before office, nor in the lord before entry or recovery, in a writ of escheat, or death of the party attainted.

In felony, there can be no proceeding with the accessory, before there be a proceeding with the principal: If he die, or plead his pardon, or have his clergy, before attainder, the accessory can never be dealt with.

In felony, if the party stand mute, and will not put himself upon trial, or challenge peremptorily, above that the law allows, he shall have judgment, not of hanging, but of penance of pressing to death; but there he saves his lands, and forfeits only his goods.

In felony, at the common law, the benefit of clergy, or sanctuary, was allowed; but now by statute, it is taken away in most cases.

In felony, bail may be admitted where the fact is not notorious, and the person not of ill name.

In felony, no counsel is to be allowed to the party, no more than in treason.

In felony, if the fact be committed beyond the seas, or upon the seas, *super altum mare*, there is no trial at all in one case, nor by course or jury in the other, but by the jurisdiction of the admiralty.

In felony, no witness shall be received upon oath for the party's justification, no more than in treason.

In felony, if the party be *non sanæ memoriæ*, although it be after the fact, he cannot be tried nor adjudged, except it be in course of outlawry, and that is also erroneous.

In felony, the death of the party, before conviction, dischargeth all proceedings and forfeitures.

In felony, if the party be once acquitted, or in peril of judgment of life lawfully, he shall never be brought in question again, for the same fact.

In felony, the prosecution may be either at the king's suit, or by way of appeal; the defendant shall have his course, and produce witnesses upon oath, as in civil causes.

In felony, the king may grant hault justice to a subject, with the regality of power to pardon it.

In felony, the trial of peers is all one as in case of treason.

In felony, the proceedings are in the King's Bench, or before commissioners of Oyer and Terminer, or of jail delivery, and in some cases before justices of the peace.

## CHAP. IX.

### *Cases of Felony de se, with the Punishment, Trial, and Proceedings.*

IN the civil law, and other laws, they make a difference of cases of felony *de se*; for where a man is called in question upon any capital crime, and killeth himself to prevent the law, there they give the judgment in all points of forfeiture, as if they had been attainted in their life-time: And, on the other side, where a man killeth himself upon

impatience of sickness, or the like, they do not punish it at all; but the law of England taketh it all in one degree, and punisheth only with loss of goods, to be forfeited to the king, who generally grants them to his almoner, where they be not formerly granted unto special liberties.

## CHAP. X.

*Cases of Præmunire.*

WHERE a man purchaseth or accepteth any provision, that is, collation of any spiritual benefice or living, from the see of Rome, it is *præmunire*.

Where a man shall purchase any process to draw any people off the king's allegiance out of the realm, in plea whereof the cognisance pertains to the king's court, and cometh not in person to answer his contempt in that behalf before the king and his council, or in his chancery, it is *præmunire*.

Where a man doth sue in any court which is not the king's court, to defeat or impeach any judgment given in the king's court, and doth not appear to answer his contempt, it is *præmunire*.

Where a man doth purchase or pursue in the court of Rome, or elsewhere, any process, sentence of excommunication, bull, or instrument, or other thing which toucheth the king in his regality, or his realm in prejudice, it is *præmunire*.

Where a man doth affirm or maintain any foreign kind of jurisdiction spiritual, or doth put in use or execution any thing for the advancement or setting forth thereof; such offence the second time committed is *præmunire*.

Where a man refuseth to take the oath of supremacy, being tendered by the bishop of the diocese, if he be an ecclesiastical person; or by a commission out of the chancery, if he be a temporal person, it is *præmunire*.

Where a dean and chapter of any church, upon the *conge d'elire* of an archbishop or bishop, doth refuse to elect any such archbishop or bishop, as is nominated unto them in the king's letters missive, it is *præmunire*.

Where a man doth contribute or give relief to any jesuit or seminary priest, or to any person brought up therein, and called home, and not returning, it is case of *præmunire*.

Where a man is a broker of an usurious contract above ten in the hundred, it is *præmunire*.

## CHAP. XI.

*The Punishment, Trial, and Proceedings in Cases of Præmunire.*

THE punishment is by imprisonment during life, forfeiture of goods,



forfeiture of lands in fee-simple, and forfeiture of the profits of lands intailed, or for life.

The trial and proceeding is as in cases of misprision of treason, and the trial is by peers, where a peer of the realm is the offender.

Striking any man, in the face of the king's courts, is forfeiture of lands, perpetual imprisonment, and loss of that hand.

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## CHAP. XII.

### *Cases of Abjuration and Exile, and the Proceedings therein.*

Where a man committeth any felony, for the which at this day he may have privilege of sanctuary, and confesseth the felony before the coroner, he shall abjure the liberty of the realm, and chuse his sanctuary; and if he commit any new offence, or leave his sanctuary, he shall lose the privilege thereof, and suffer as if he had not taken sanctuary.

Where a man, not coming to the church, and being a popish recusant, doth persuade any the king's subjects to impugn his Majesty's authority in causes ecclesiastical, or shall persuade any subject to come to any unlawful conventicles, and shall not after conform himself within a time, and make his submission, he shall abjure the realm, and forfeit his goods and lands during life; and, if he depart not within the time prefixed, or return, he shall be in the degree of a felon.

Where a man, being a popish recusant, and not having lands to the value of twenty marks per annum, nor goods to the value of forty pounds, shall not repair to his dwelling or place where he was born, and there confine himself within the compass of five miles, he shall abjure the realm; and, if he return, he shall be in the case of a felon.

Where a man kills the king's deer in chaces or forests, and can find no sureties after a year's imprisonment, he shall abjure the realm.

Where a man is a trespasser in parks, or in ponds of fish, and after three years imprisonment cannot find sureties, he shall abjure the realm.

Where a man is a ravisher of any child, whose marriage belongs to any person, and marrieth the said child after years of consent, and is not able to satisfy for the marriage, he shall abjure the realm.

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## CHAP. XIII.

### *Cases of Heresy, and the Trial and Proceedings therein.*

THE declaration of heresy, and likewise the proceedings and judgment upon hereticks, is by the common laws of this realm referred to the jurisdiction ecclesiastical, and the secular arm is reached to them by the common laws, and not by any statute for the execution of them by the king's writ *de hæretico comburendo*.

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CHAP. XIV.

*The King's Prerogative in Parliament.*

THE king hath an absolute negative voice to all bills that pass the parliament, so as, without his royal assent, they have a mere nullity, and not so much as *authoritas præscripta*, or *senatus consulta* had, notwithstanding the intercession of tribunes.

The king may summon parliaments, dissolve them, prorogue them, and adjourn them, at his pleasure.

The king may add voices in the parliament at his pleasure, for he may give privilege to borough towns as many as he will, and may likewise call and create barons, at his pleasure.

No man can sit in parliament, except he take the oath of allegiance.

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CHAP. XV.

*The King's Prerogative in Matters of War or Peace.*

THE king hath power to declare and proclaim war, and to make and conclude peace, and truce, at his pleasure.

The king hath power to make leagues and confederacies with foreign states, more strait and less strait, and to revoke and disannul them at his pleasure.

The king hath power to command the bodies of his subjects for the service of his wars, and to muster, train, and levy men, and to transport them by sea or land, at his pleasure.

The king hath power, in time of war, to execute martial law, and to appoint all officers of war, at his pleasure.

The king hath power to grant his letters of mart and reprisal for remedy to his subjects upon foreign wrongs, at his pleasure.

The king hath power to declare laws by his letters patents for the government of any place conquered by his arms, at his pleasure.

The king may give knighthood, and thereby enable any subject to perform knight's service, at his pleasure.

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CHAP. XVI.

*The King's Prerogative in Matters of Money.*

THE king may alter his standard, in baseness or fineness of his coin, at his pleasure.

The king may alter his stamp in form, at his pleasure.

The king may alter the valuations of his coin, and raise and fall monies, at his pleasure.

The king, by his proclamation, may make monies of his own current, or not current, at his pleasure.

The king may take or refuse the subjects bullion and coin, more or less money.

The king, by his proclamation, may make foreign money current, or not current.

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#### CHAP. XVII.

##### *The King's Prerogative in Matters of Trade and Traffick.*

THE king may constrain the person of any of his subjects not to go out of the realm at all.

The king may restrain any of his subjects to go out of the realm into any special part foreign.

The king may forbid the exportation of any commodity out of the realm.

The King may forbid the importation of any commodities into the realm.

The king may set a reasonable impost upon any foreign wares, that come into the realm, and so of native wares, that go out of the realm.

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#### CHAP. XVIII.

##### *The King's Prerogative in the Persons of his Subjects.*

THE king may create any corporation or body politick, and enable them to purchase, and grant, and to sue, and be sued, and that with such restrictions and modifications as he pleases.

The king may denizen and enable any foreigner for him and his descendants after the charter, though he cannot naturalise nor enable him to make pedigree from ancestors paramount.

The king may enable any attainted person, by his charter of pardon, to purchase and to purge his blood for the time to come, though he cannot restore his blood for the time past.

The king may enable any dead person in law, as men professed, to take and purchase to the king's benefit.

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#### CHAP. XIX.

##### *An Answer to the Question proposed by Sir Alexander Hay, Knight, touching the Office of Constables.*

1. TO the first, of the original of the authority of constables, it may be said, *Caput inter nubila condit*, for the authority was granted upon

the ancient laws and customs of this kingdom, practised long before the conquest, and intended and instituted for the conservation of the peace, and repressing of all manner of disturbance, and hurt of the people, and that as well by way of prevention as punishment; but yet so, as they have no judicial power, to hear and determine any cause, but only a ministerial power, as in the answer of the seventh article more at large is set down.

As for the office of the high constable, the original of that is yet more obscure; for though the high constable's authority hath the more ample circuit, he being over the hundred, and the petty constable over the village; yet, I do not find, that the petty constable is subordinate to the high constable, or to be ordered or commanded by him; and therefore, I doubt, the high constable was not *ab origine*, but that when the business of the country increased, the authority of the justices of peace was enlarged by divers statutes; then, for conveniency sake, the office of high constables grew in use for the receiving of the commands and precepts from the justices of peace, and distributing them to the petty constables; and, in token of this, the election of high constable, in most parts of the kingdom, is by the appointment of the justices of peace, whereas the election of the petty constable is by the people.

But there be two things unto which the office of constable hath special reference, and which, of necessity, or, at least, a kind of congruity, must precede the jurisdiction of that office, either the things themselves, or somewhat that hath a similitude or analogy towards them.

1. The one is the division of the territory, or gross of the shires, into hundreds, villages, and towns; for the high constable is officer over the hundred, and the petty constable is over the town or village.

2. The other is the Court-Leet, unto which the constable is a proper attendant and minister; for there the constables are chosen by the jury, there they are sworn, and there that part of their office, which concerneth information, is principally to be performed; for the jury is to present offences, and the offenders are chiefly to take light from the constables, of all matters of disturbance and nuisance of the people, which they, in respect of their office, are presumed to have best and most particular knowledge of.

## CHAP. XX.

### *Three Ends of the Institution of the Court-Leet.*

1. THE first end of the institution of the court-leet, is, To take the oath of allegiance of all males above the age of twelve years.

2. The second, To enquire of all offences against the peace: and, for those that are against the crown and peace both, to enquire of only, and certify to the justices of gaol-delivery; but those, that are against the peace simply, they are to enquire and punish.



3. The third is, To enquire of, punish, and remove all publick nuisances, and grievances, concerning infection of air, corruption of victuals, ease of chaffer, and contract of all other things, that may hurt or grieve the people in general, in their health, quiet, and welfare.

And to these three ends, as matters of policy subordinate, the court-leet hath power to call upon the pledges that are to be taken for the good behaviour of the residents, that are not tenants, and to enquire of all defaults of officers, as constables, ale-tasters, &c. and for choice of constables, as aforesaid.

The jurisdiction of these leets is ever remaining in the king, and, in that case, exercised by the sheriff in his turn, which is the grand leet, granted over to subjects; but, yet, it is still the king's court.

2. To the second, as was said, the election of the petty constable is at the court-leet by the inquest that makes the presentments; the election of the head constables is by the justices of the peace at their quarter sessions.

3. To the third, the office is annual, except they be removed.

4. To the fourth, they be men, as it is now used, of inferior, yea, of base condition, which is a mere abuse, or degenerating, from the first institution; for the petty constables in towns ought to be of the better sort of residents in the said towns, save, that they ought not to be aged, or sickly, but men of able bodies, in respect of the keeping watch, and toil of their place, neither ought they to be in any man's livery: and the high constables ought to be of the ablest sort of freeholders, and of the substantiallest sort of yeomen, next to the degree of gentlemen; but they ought to be such as are not incumbered with any other office, as mayor, under-sheriff, bailiff, &c.

5. To the fifth, they have no allowance, but are bound by duty to perform their offices, *gratis*; which may the rather be endured, because it is but annual, and they are not tied to keep or maintain any servants or underministers, for that every one of the king's people are bound to assist them.

6. To the sixth, upon complaint made, of his refusal, to any one justice of peace, the said justice shall bind him over to the sessions; where, if he cannot excuse himself by some just allegation, he may be fined and imprisoned for his contempt.

7. To the seventh, the authority of constables, as it is substantive, and of itself, or substituted, and astricted to the warrants and commands of the justices of peace; so again it is original, or additional; for, either it was given to them by the common law, or else annexed by divers statutes. And, as for subordinate power, wherein the constable is only to execute the commandments of the justices of peace, and likewise the additional power which is given by divers statutes, it is hard to comprehend them in any brevity; for that they do correspond to the office and authority of the justices of peace, which is very large, and are created by the branches of several statutes, which are things of divers and dispersed natures: But, for the original and substantive power of a constable, it may be reduced to three heads:

1. For matter of peace only.

2. For matter of peace and the crown.

3. For matter of nuisance, disturbance, and disorder, although they be not accompanied with violence and breach of peace.

For pacifying of quarrels begun, the constables may, upon hot words given, or likelihood of breach of peace to ensue, command them, in the king's name, to keep the peace, and depart, and forbear: and so he may, where an assault is made, part the same, and keep the parties asunder, and arrest and commit the breakers of the peace, if they will not obey, and call power to assist him for the same purpose.

For punishment of breach of peace past, the law is very sparing in giving any authority to constables, because he hath no power judicial, and the use of his office is rather for preventing, or staying of mischief, than for punishing of offences; for, in that part, he is rather to execute the warrants of the justices, or, when sudden matter ariseth upon his view, or notorious circumstances, to apprehend offenders, and carry them before the justice of peace, and generally to imprison, in like cases of necessity, where the case will not endure the present carrying before the justices. And thus much for the matters of peace.

For matters of the crown, the office of the constable consisteth chiefly in four parts:

1. The First is Arrest.
2. The Second is Search.
3. The third is Hue and Cry.
4. And the fourth is Seizure of goods.

All which the constable may perform of his own authority, without any warrant from a justice of peace.

1. For first, if any man will lay murder or felony to another's charge, or do suspect him of murder or felony, he may declare it to the constable, and the constable ought, upon such declaration or complaint, carry him before a justice; and if, by common voice or fame, any man be suspected, the constable of duty ought to arrest him, and bring him before a justice, though there be no other accusation.

2. If any house be suspected for the receiving or harbouring of any felon, the constable, upon complaint, or common fame, may search.

3. If any fly upon the felony, the constable ought to raise hue and cry, and search his goods, and keep them safe without impairing, and to inventory them in the presence of honest neighbours.

4. For matters of common nuisance and grievances, they are of a very variable nature, according to the several comforts which man's life and society require, and the contraries which infest the same.

In all which, be it matter of corrupting air, water, or victuals, or stopping, straightening, or endangering passage, or general deceits in weights, measures, sizes, or counterfeiting wares, and things vendible; the office of the constable is, to give, as much as in him lies, information of them, and of the offenders in leets, that they may be presented. But, because leets are kept but twice in the year, and many of these things require present or speedy remedy, the constable, in things of a notorious and vulgar nature, ought to forbid and repress them in the mean time.



8. To the eighth, they are, for their contempt, to be fined and imprisoned by the justices in their sessions.

9. To the ninth: the oath they take is in this manner:

'You shall swear, that you shall well and truly serve the king, and the Lord of this law-day; and you shall cause the peace of our Lord, the king, to be well and duly kept, to your power: and you shall arrest all those that you see committing riots, debates, and affrays in breach of peace: and you shall well and duly endeavour yourself to your best knowledge, that the statutes of Winchester for watch, hue and cry, and the statutes made for the punishment of sturdy beggars, vagabonds, rogues, and other idle persons, coming within your office, be truly executed, and the offenders punished: and you shall endeavour, upon complaint made, to apprehend barreters and riotous persons, making frays, and likewise to apprehend felons; and if any of them make resistance with force and multitude of mis-doers, you shall make outcry, and pursue them, till they be taken; and shall look unto such persons as use unlawful games; and you shall have regard unto the maintenance of artillery; and you shall well and duly execute all process and precepts sent unto you from the justices of peace of the county; and you shall make good and faithful presentments of all blood-sheds, out-cries, affrays, and rescues made within your office; and you shall well and duly, according to your power and knowledge, do that which belongeth to your office of constable, to do for this year to come.' So help, &c.

10. To the tenth, the authority is the same in substance, differing only in extent; the petty constable serving only for one town, parish, or borough; the head constable serving for the whole hundred; neither is the petty constable subordinate to the head constable, for any commandment that proceeds from his own authority; but it is used, that the precepts of the justices be delivered unto the high constables, who, being few in number, may better attend the justices, and then the head constables, by vertue thereof, make their precepts over to the petty constables.

11. To the eleventh, in case of necessity he may appoint a deputy, or in default thereof, the steward of the court-leet may; which deputy ought to be sworn.

Now to conclude, the office of constables consists wholly in these three things, viz.

- Their office concerning, 1. The conservation of the peace.  
2. The serving the precepts and warrants of the justices.  
3. Their attendance for the execution of statutes.

## CHAP. XXI.

*Of the Jurisdiction of Justices itinerantes in the Principality of Wales.*

THESE justices have power to hear and determine all criminal causes, which are called in the laws of England, the pleas of the crown; and herein they have the same jurisdiction, that the justices have in his majesty's bench, commonly called the king's bench.

They have jurisdiction to hear and determine all civil causes, which are called, in the laws of England, common-pleas; and do take knowledge of all fines, levied of lands or hereditaments, without suing out any *dedimus potestatem*; and herein they have the same jurisdiction that the justices of the common-pleas do execute at Westminster.

Also they may hear and determine all assizes upon disseizins of lands or hereditaments, wherein they equal the jurisdiction of the justices of assize.

Justices of Oyer and Terminer may hear and determine all notable violences and outrages perpetrated or done, within their several precincts of the principality of Wales.

\* The prothonotary's office is to draw all pleadings, and to enter and ingross all records and judgments in civil causes.

\* The clerk of the crown's office is to ingross all proceedings, arraignments, and judgments in criminal causes.

† The marshal, whose office is to attend the persons of the judges at their coming, sitting, and going from the sessions or court.

† The crier, he is *tanquam publicus Præco*, to call forth such persons, whose appearances are necessary, and to impose silence to the people.

There is a commission under the great seal of England, to certain gentlemen, giving them power to preserve the peace, and to resist and punish all turbulent persons, whose misdemeanors may tend to the disquiet of the people; and these be called, the justices of peace, and every of them may well and truly be called and termed *Eirenarchæ*.

The chief of them is called *Custos Rotulorum*, in whose custody all the records of their proceedings are resident.

Others there are of that number, called justices of peace and *Quorum*; because in their commission, they have power to sit and determine causes, concerning breach of peace, and misbehaviour; the words of their commission are conceived thus, *Quorum* such and such, *unum vel duos &c. esse volumus*; and without some one, or more, of them of the *Quorum*, no sessions can be holden; and for the avoiding of a superfluous number of such justices (for through the ambition of many, it is counted a credit, to be burthened with that authority) the statute of 38 Henry VIII. hath expressly prohibited that there shall be but eight

\* In the King's Gift.

† In the disposing of the Judge.



justices of peace \* in every county. These justices do hold their sessions quarterly.

In every shire, where the commission of the peace is established, there is a clerk of the peace, for the entering and ingrossing of all proceedings before the said justices. And this officer is appointed by the *Custos Rotulorum*.

Every shire hath its sheriff, which word, being of the Saxon English, is as much to say, as shire reeve, or minister of the county: his function or office is two fold:

1. Ministerial.
2. Judicial.

As touching his ministerial office, he is the minister and executioner of all the process and precepts of the courts of law, and thereof ought to make return and certificate.

As touching his judicial office, he hath authority to hold two several courts of distinct natures: the one called the *tourne*, because he keepeth his turn and circuit about the shire, and holdeth the same court in several places, wherein he doth inquire of all offences perpetrated against the common law, and not forbidden by any statute or act of parliament; and the jurisdiction of this court is derived from justice distributive, and is for criminal offences, and is held twice every year.

The other is called the county court, wherein he doth determine all petty and small causes civil, under forty shillings, arising within the said county, and therefore it is called the county court.

The jurisdiction of this court is derived from justice commutative, and is held every month: the office of the sheriff is annual, and in the king's gift, whereof he is to have a patent.

Every shire hath an officer, called an *Escheator*, which is an office to attend the king's revenue, and to seize into his majesty's hands all lands, either escheated goods, or lands forfeited, and therefore is called *Escheator*; and he is to inquire by good inquest of the death of the king's tenants, and to whom their lands are descended, and to seize their bodies and lands for ward, if they be within age, and is accountable for the same; and this officer is named by the lord treasurer of England.

There are in every shire two other officers, called *crownors* or *coroners*; they are to enquire by inquest, in what manner, and by whom every person dieth of a violent death, and to enter the same of record; which is a matter criminal, and a plea of the crown, and therefore they are called *coroners*, or *crownors*, as one hath written, because their inquiry ought to be publick in *Corona populi*.

These officers are chosen by the freeholders of the shire, by vertue of a writ out of the chancery, *De Coronatore eligendo*; and of them I need not to speak more, because these officers are in use elsewhere.

Forasmuch as every shire is divided into hundreds, it is also by the said statute of 34 Henry VIII. Cap. 26, ordered, that two sufficient gentlemen, or yeomen, shall be appointed constables of every hundred.

Also there is, in every shire, one jail or prison, appointed for the

\* These Justices are appointed by the Lord Keeper.

restraint of liberty of such persons as for their offences are thereunto committed, until they shall be delivered by course of law.

In every hundred of every shire, the sheriff thereof shall nominate sufficient persons to be bailiffs of that hundred, and underministers of the sheriff; and they are to attend upon the justices in every of their courts and sessions.

THE

## SPEECH OF THE LORD DIGBY,

IN THE

High Court of Parliament,

## CONCERNING GRIEVANCES.

Printed for Thomas Walkely, 1641. Quarto, containing twelve pages.

*Mr. Speaker,*

YOU have received now a solemn account from the most of the shires of England, of the several grievances and oppressions they sustain, and nothing as yet from Dorsetshire. Sir, I would not have you think that I serve for a land of Goshen, that we live there in sunshine, whilst darkness and plagues overspread the rest of the land: As little would I have you think, that, being under the same sharp measure that the rest, we are either insensible and benumbed, or that that shire wanteth a servant to represent its sufferings boldly.

It is true, Mr. Speaker, the county of Dorset hath not digested its complaints into that formal way of petition, which others, I see, have done; but have intrusted them to my partners and my delivery of them, by word of mouth, unto this honourable house. And there was given unto us, in the county court, the day of our election, a short memorial of the heads of them, which was read in the hearing of the freeholders there present, who all unanimously with one voice signified upon each particular, that it was their desire that we should represent them to the parliament, which, with your leave, I shall do. And these they are:

1. The great and intolerable burthen of ship-money, touching the legality whereof they are unsatisfied.
2. The many great abuses in pressing of soldiers, and raising monies concerning the same.
3. The multitude of monopolies,

4. The new canon, and the oath to be taken by lawyers, divines, &c.

5. The oath required to be taken by church officers to present, according to articles new and unusual.

Besides this, there was likewise presented to us, by a very considerable part of the clergy of that county, a note of remembrance, containing these two particulars:

First, The imposition of a new oath required to be taken by all ministers, and others, which they conceive to be illegal, and such as they cannot take with a good conscience.

Secondly, The requiring of a pretended benevolence, but, in effect, a subsidy, under the penalty of suspension, excommunication, and deprivation, all benefit of appeal excluded.

This is all we had particularly in charge: But, that I may not appear a remiss servant of my country, and of this house, give me leave to add somewhat of my own sense.

Truly, Mr. Speaker, the injurious sufferings of some worthy members of this house, since the dissolution of the two last parliaments, are so fresh in my memory, that I was resolved not to open my mouth in any business wherein freedom and plain dealing were requisite, until such time as the breach of our privileges were vindicated, and the safety of speech settled.

But since such excellent members of our house thought fit the other day to lay aside that caution, and to discharge their souls so freely in the way of zeal to his majesty's service, and their country's good: I shall interpret that confidence of theirs for a lucky omen to this parliament, and, with your permission, license my thoughts too, a little.

Mr. Speaker, under those heads which I proposed to you, as the grievances of Dorsetshire, I suppose are comprised the greatest part of the mischiefs which have, of late years, laid battery either to our estates or consciences.

Sir, I do not conceive this the fit season to search and ventilate particulars, yet, I profess, I cannot forbear to add somewhat to what was said the last day by a learned gentleman of the long robe, concerning the acts of that reverend new synod, made of an old convocation. Doth not every parliament-man's heart rise to see the prelates thus usurp to themselves the grand pre-eminence of parliament? The granting of subsidies, and that under so preposterous a name as of a benevolence, for that which is a malevolence indeed; a malevolence, I am confident, in those that granted it, against parliaments; and a malevolence surely in those that refuse it, against those that granted it; for how can it incite less? When they see wrested from them what they are not willing to part with, under no less a penalty than the loss both of heaven and earth; of heaven, by excommunication; and of the earth, by deprivation; and this without redemption by appeal. What good Christian can think with patience on such an insnaring oath, as



that which is, by the new canons, enjoined to be taken by all ministers, lawyers, physicians, and graduates in the universities? Where, besides the swearing such an impertinence, as that things necessary to salvation are contained in discipline; besides the swearing those to be of divine right, which, amongst the learned, never pretended to it, as the arch things in our hierarchy. Besides, the swearing not to consent to the change of that, which the state may, upon great reason, think fit to alter; besides the bottomless perjury of an &c. Besides all this, Mr. Speaker, men must swear that they swear freely and voluntarily what they are compelled unto; and, lastly, that they swear that oath in the literal sense, whereof no two of the makers themselves, that I have heard of, could ever agree in the understanding.

In a word, Mr. Speaker, to tell you my opinion of this oath, it is a covenant against the king, for bishops and the hierarchy, as the Scottish covenant is against them; only so much worse than the Scottish, as they admit not of the supremacy in ecclesiastical affairs, and we are sworn unto it.

Now, Mr. Speaker, for those particular heads of grievances whereby our estates and properties are so radically invaded; I suppose, as I said before, that it is no season now to enter into a strict discussion of them; only thus much I shall say of them, with application to the country for which I serve, that none can more justly complain, since none can more justly challenge exemption from such burthens than Dorsetshire; whether you consider it is a country subsisting much by trade, or as made of the most populous; or as exposed as much as any to foreign invasion.

But, alas! Mr. Speaker, particular lamentations are hardly distinguishable in universal groans.

Mr. Speaker, it hath been a metaphor frequent in parliament, and, if my memory fail me not, was made use of in the lord keeper's speech at the opening of the last, that what money kings raised from their subjects, they were but as vapours drawn up from the earth by the sun, to be distilled upon it again in fructifying showers. The comparison, Mr. Speaker, hath held of late years in this kingdom too unluckily; what hath been raised from the subject by those violent attractions, hath been formed, it is true, into clouds, but how? To darken the sun's own lustre, and hath fallen again upon the land only in hailstones and mildews, to batter and prostrate still more and more our liberties, to blast and wither our affections; had not the latter of these been still kept alive by our king's own personal virtues, which will ever preserve him, in spite of ill counsellors, a sacred object both of our admiration and loves.

Mr. Speaker, it hath been often said in this house, and, I think, can never be too often repeated, that the kings of England can do no wrong: But, though they could, Mr. Speaker, yet princes have no part in the ill of those actions which their judges assure them to be just, their counsellors that they are prudent, and their divines that they are conscientious.

This consideration, Mr. Speaker, leadeth me to that which is more necessary far, at this season, than any farther laying open of our

miseries, that is, the way to the remedy, by seeking to remove from our sovereign such unjust judges, such pernicious counsellors, and such disconscient divines, as have of late years, by their wicked practices, provoked aspersions upon the government of the graciousest and best of kings.

Mr. Speaker, let me not be misunderstood; I level at no man with a forelaid design; let the faults, and those well proved, lead us to the men: It is the only true parliamentary method, and the only fit one to incline our sovereign. For it can no more consist with a gracious and righteous prince to expose his servants upon irregular prejudices, than with a wise prince to withhold malefactors, how great soever, from the course of orderly justice.

Let me acquaint you, Mr. Speaker, with an aphorism in Hippocrates, no less authentick, I think, in the body politick, than in the natural. This is it, Mr. Speaker, bodies, to be thoroughly and effectually purged, must have their humours first made fluid and moveable.

The humours, that I understand to have caused all the desperate maladies of this nation, are the ill ministers. To purge them away clearly, they must be first loosened, unsettled, and extenuated, which can no way be effected with a gracious master, but by truly representing them unworthy of his protection. And this leadeth me to my motion, which is, that a select committee may be appointed to draw out all that hath been here represented; such a remonstrance as may be a faithful and lively representation unto his majesty of the deplorable estate of this his kingdom, and such as may happily point out unto his clear and excellent judgment the pernicious authors of it. And that, this remonstrance being drawn, we may, with all speed, repair to the lords, and desire them to join with us in it. And this is my humble motion.

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THE

## JUDGES' JUDGMENT;

*A Speech penned in the beginning of the Parliament against the Judges.*

PER IGNOTUM QUENDAM.

Printed for John Ashton, 1641. Quarto, containing twelve pages.

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*Mr. Speaker,*

**I**T was a custom amongst the Romans (who, as by their power they once gave laws, so, by the happy success of their long flourishing government, might they well give examples to all the world) that in their senates the youngest men spoke first: partly, that they might



not have their weaker notions anticipated by the more knowing senators; and partly, for that the senate might not be diverted from the mature resolutions of the more antient, by the interpositions of the younger men; they, as all free states, ever allowing free members to express themselves, according to their several capacities: and methinks it was a happy method. So your opinions and inclinations of the assembly being discovered and ripened to resolution by such gradations, the sentences of the sages sounded as judgments, not orations; their wisdom and gravity put a seasonable period to others, perhaps otherwise endless discourses.

Their precedent encourages me (who worst may) to break the ice. Children can lay their fingers on the sore, point out their pain; and infant graduates in parliament may groan out the grievances of a diseased commonwealth; but they must be doctors in the art of government, that can apply apt remedies to recover it.

Mr. Speaker, antient and approved hath been that parallel of the body politick with the body natural: It is the part of the patients in either distempered, to impart freely their griefs to the physicians of the body or state, if they expect a cure.

This commonwealth is, or should be, but one body: This house the great physician of all our maladies; and, alas, Mr. Speaker, of what afflicted part shall we poor patients complain first? Or rather, of what shall we not complain?

Are we not heart-sick? Is there in us that which God requires, unity, purity, and singularity of heart? Nay, is not religion (the soul of this body) so miserably distracted, that, I speak it with terror of heart, it is to be feared, there is more confusion of religions amongst us, than there was of tongues at the subversion of Babel: And is it not then high time that we understand one another, that we were reduced to one faith, one government?

Sir, is the head whole: The seat of government and justice, the fountain from whose sweet influence all the inferior members of this body should receive both vigour and motion: Nay, hath not rather a general apoplexy, or palsy, taken, or shaken, all our members? Are not some dead? Others buried quick? Some dismembered, all disordered, by the diversion of the course of justice?

Is the liver (nature's exchequer) open; from whose free distribution each limb may receive its proper nutriment, or rather is it not wholly obstructed? Our property taken from us? So that it may properly be said of us, *Sic vos non vobis fertis aratra*; our ancestors drank the juice of their own vines, reaped and eat the fruit of their own harvest. But now the poor man's plough goes to furrow the seas, to build ships: We labour not for ourselves, but to feed excrescences of nature, things grown up out of the ruins of the natural members, monopolists.

Sir, these are *maxime vitalia*; religion, justice, property: The heart, the head, the liver, of this great body; and these distempered or obstructed, can the subordinate parts be free? No, sir, the truth is, all is so far out of frame, that to lay open every particular grievance



in law, approved in equity, that, *Qui non habent in crumena, luan in corpore*; and it is without all question, in policy, exemplary punishments conduce more to the state, than pecuniary reparations; hope of impunity lulls every bad great officer into security, for his time; and, who would not venture to raise a fortune, when the allurements of honour and wealth are so prevalent, if the worst that can befall, be but restitution?

We see the bad effects of this bold erroneous opinion; what was at first but corrupt law, by encouragement taken from their impunity, is since become false doctrine; the people taught in pulpits, they have no property; kings instructed in that destructive principle, that all is their's; and it is thence deduced into necessary state-policy, whispered in council, that he is no monarch who is bounded by any law.

By which bad consequences, the best of kings hath been, by the infusion of such poisonous positions, diverted from the sweet inclinations of his own natural equity and justice; the very essence of a king taken from him, which is the preservation of his people; and, whereas *salus populi* is, or should be *suprema lex*, the power of undoing us is masqued under the stile of what should be sacred royal prerogative.

And is it not high time for us to make examples of the first authors of this subverted law, bad counsel, worse doctrine?

Let no man think to divert us from the pursuit of justice, by poisoning the clear streams of our affections with jealous fears of his majesty's interruption, if we look too high. Shall we therefore doubt of justice, because we have need of great justice? We may be confident, the king well knows, That his justice is the band of our allegiance; that it is the staff, the proof of his sovereignty?

It is an happy assurance of his intentions of grace to us, that our loyalty hath at last won him to tender the safety of his people; and certainly (all our pressures well weighed, these twelve years last past) it will be found, the passive loyalty of this suffering nation hath outdone the active duty of all times and stories: As the poet hath it,

*Fortiter ille facit, qui miser esse potest.*

I may as properly say, *fideliter fecimus*, we have done loyally to suffer so patiently.

Then, since our royal lord hath in mercy visited us, let us not doubt, but, in his justice, he will redeem his people. *Qui timide rogat, docet negare*. But, when religion is innovated, our liberties violated, our fundamental laws abrogated, our modern laws already obsoleted, the property of our estates alienated, nothing left us, we can call our own, but our misery and our patience; if ever any nation might justifiably, this certainly may now, now most properly, most seasonably cry out, and cry loud, *Vel sacra regnet justitia, vel ruat calum*.

Mr. Speaker, the sum of my humble motion is, That a special committee may be appointed to examine the whole carriage of that extrajudicial judgment; who were the counsellors, sollicitors, and subscribers to the same; the reasons of their subscription; whether according to their opinions, by importunity, or pressure of others, whether *pro forma tantum*; and, upon report thereof, to draw up a charge against the guilty; and then, *Curat lex, fiat justitia*.

MR. JOHN MILTON'S  
CHARACTER OF THE LONG PARLIAMENT  
AND ASSEMBLY OF DIVINES,

In 1641.

*Omitted in his other Works, and never before printed, and very seasonable  
for these Times.*

London, printed for Henry Brome, at the Gun at the West end of St. Paul's,  
1681. Quarto, containing sixteen Pages.

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TO THE READER.

THE reader may take notice, that this character of Mr. Milton's was a part of his History of Britain, and by him designed to be printed: but, out of tenderness to a party [whom neither this nor much more lenity has had the luck to oblige], it was struck out for some harshness, being only such a digression, as the history itself would not be discomposed by its omission; which I suppose will be easily discerned, by reading over the beginning of the third book of the said history, very near which place this character is to come in. It is reported, and from the foregoing character it seems probable, that Mr. Milton had lent most of his personal estate upon the publick faith; which, when he somewhat earnestly and warmly pressed to have restored [observing how all in offices had not only feathered their own nests, but had enriched many of their relations and creatures, before the publick debts were discharged], after a long and chargeable attendance, met with very sharp rebukes; upon which, at last despairing of any success in this affair, he was forced to return from them poor and friendless, having spent all his money, and wearied all his friends. And he had not probably mended his worldly condition in those days, but by performing such service for them, as afterwards he did, for which scarce any thing would appear too great.

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OF these, who swayed most in the late troubles, few words, as to this point, may suffice. They had arms, leaders, and successes to their wish; but to make use of so great an advantage was not their skill.

To other causes therefore, and not to the want of force, or warlike  
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manhood in the Britons, both those, and these lately, we must impute the ill-husbanding of those fair opportunities, which might seem to have put liberty, so long desired, like a bridle into their hands. Of which other causes equally belonging to ruler, priest, and people, above have been related; which, as they brought those ancient natives to misery and ruin, by liberty, which, rightly used, might have made them happy; so brought they these of late, after many labours, much bloodshed, and vast expence, to ridiculous frustration; in whom the like defects, the like miscarriages notoriously appeared, with vices not less hateful or inexcusable.

For, a parliament being called to redress many things, as it was thought, the people, with great courage, and expectation to be eased of what discontented them, chose to their behoof in parliament such as they thought best affected to the publick good, and some, indeed, men of wisdom and integrity; the rest, to be sure the greater part, whom wealth or ample possessions, or bold and active ambition, rather than merit, had commended to the same place.

But, when once the superficial zeal and popular fumes, that acted their new magistracy, were cooled, and spent in them, straight every one betook himself, setting the commonwealth behind, his private ends before, to do as his own profit or ambition led him. Then was justice delayed, and soon after denied: spight and favour determined all: hence faction, thence treachery, both at home and in the field: every where wrong, and oppression: foul and horrid deeds committed daily, or maintained, in secret, or openly. Some who had been called from shops and warehouses, without other merit, to sit in supreme councils and committees, as their breeding was, fell to huckster the commonwealth. Others did thereafter as men could sooth and humour them best; so he who would give most, or, under covert of hypocritical zeal, insinuate basest, enjoyed unworthily the rewards of learning and fidelity; or escaped the punishment of his crimes and misdeeds. Their votes and ordinances, which men looked should have contained the repealing of bad laws, and the immediate constitution of better, resounded with nothing else, but new impositions, taxes, excises; yearly, monthly, weekly. Not to reckon the offices, gifts, and preferments bestowed and shared amongst themselves: they, in the meanwhile, who were ever faithfullest to this cause, and freely aided them in person, or with their substance, when they durst not compel either, slighted, and bereaved after of their just debts by greedy sequestrations, were tossed up and down after miserable attendance from one committee to another with petitions in their hands; yet, either missed the obtaining of their suit, or, though it were at length granted (mere shame and reason oftentimes extorting from them at least a shew of justice) yet, by their sequestrators and sub-committees abroad, men for the most part of insatiable hands, and noted disloyalty, those orders were commonly disobeyed; which, for certain, durst not have been, without secret compliance, if not compact with some superiors able to bear them out. Thus were their friends confiscate in their enemies, while they forfeited their debtors to the state, as they called it, but indeed to the ravening seizure of innumerable thieves in office; yet



were withal no less burthened in all extraordinary assessments and oppressions, than those whom they took to be disaffected: nor were we happier creditors to what we called the state, than to them who were sequestered as the state's enemies.

For that faith, which ought to have been kept as sacred and inviolable as any thing holy, the publick faith, after infinite sums received, and all the wealth of the church not better employed, but swallowed up into a private gulph, was not before long ashamed to confess bankrupt. And now, besides the sweetness of bribery, and other gain, with the love of rule, their own guiltiness, and the dreaded name of just account, which the people had long called for, discovered plainly that there were of their own number, who secretly contrived and fomented those troubles and combustions in the land, which openly they sat to remedy; and would continually find such work, as should keep them from being ever brought to that terrible stand, of laying down their authority for lack of new business, or not drawing it out to any length of time, though upon the ruin of a whole nation.

And, if the state were in this plight, religion was not in much better; to reform which, a certain number of divines were called, neither chosen by any rule or custom ecclesiastical, nor eminent for either piety or knowledge above others left out; only as each member of parliament in his private fancy thought fit, so elected one by one. The most part of them were such, as had preached and cried down, with great shew of zeal, the avarice and pluralities of bishops and pluralities; that one cure of souls was a full employment for one spiritual pastor, how able soever, if not a charge rather above human strength. Yet these conscientious men (before any part of the work done for which they came together, and that on the publick salary) wanted not boldness, to the ignominy and scandal of their pastor-like profession, and especially of their boasted reformation, to seize into their hands, or not unwillingly to accept (besides one, sometimes two or more of the best livings) collegiate masterships in the universities, rich lectures in the city, setting snail to all winds that might blow gain into their covetous bosoms: by which means these great rebukers of non-residence, amongst so many distant curtes, were not ashamed to be seen so quickly pluralists and non-residents themselves, to a fearful condemnation doubtless by their own mouths. And yet the main doctrine for which they took such pay, and insisted upon with more vehemence than gospel, was but to tell us, in effect, that their doctrine was worth nothing, and the spiritual power of their ministry less available than bodily compulsion; persuading the magistrate to use it, as a stronger means to subdue and bring in conscience, than evangelical persuasion: distrusting the virtue of their own spiritual weapons, which were given them, if they be rightly called, with full warrant of sufficiency to pull down all thoughts and imaginations that exalt themselves against God. But, while they taught compulsion without convincement, which not long before they complained of, as executed unchristianly, against themselves, these intents are clear to have been no better than anti-christian; setting up a spiritual tyranny by a secular power, to the advancing of their own authority

above the magistrate, whom they would have made their executioner, to punish church delinquencies, whereof civil laws have no cognisance.

And well did their disciples manifest themselves to be no better principled than their teachers, trusted with committeeships, and other gainful offices, upon their commendations for zealous and (as they stuck not to term them) godly men, but executing their places, like children of the devil, unfaithfully, unjustly, unmercifully, and, where not corruptly, stupidly; so that, between them the teachers, and these the disciples, there hath not been a more ignominious and mortal wound to faith, to piety, to the work of reformation; nor more cause of blaspheming given to the enemies of God and truth, since the first preaching of reformation.

The people, therefore, looking one while on the statists, whom they beheld without constancy or firmness, labouring doubtfully beneath the weight of their own too high undertakings, busiest in petty things, trifling in the main, deluded and quite alienated, expressed divers ways their disaffection, some despising whom before they honoured, some deserting, some inveighing, some conspiring against them. Then, looking on the churchmen, whom they saw, under subtle hypocrisy, to have preached their own follies, most of them not the gospel; time-servers, covetous, illiterate persecutors, not lovers of the truth; like in most things, whereof they accused their predecessors: looking on all this, the people, which had been kept warm a while with the counterfeit zeal of their pulpits, after a false heat, became more cold and obdurate than before, some turning to lewdness, some to flat atheism, put beside their old religion, and foully scandalised in what they expected should be new.

Thus they, who of late were extolled as our greatest deliverers, and had the people wholly at their devotion, by so discharging their trust, as we see, did not only weaken and unfit themselves to be dispensers of what liberty they pretended, but unfitted also the people, now grown worse and more disordinate, to receive, or to digest any liberty at all. For stories teach us, that liberty, sought out of season, in a corrupt and degenerate age, brought Rome itself into a farther slavery: for liberty hath a sharp and double edge, fit only to be handled by just and virtuous men; to bad and dissolute it becomes a mischief unwieldy in their own hands; neither is it completely given, but by them who have the happy skill to know what is grievance and unjust to a people, and how to remove it wisely; what good laws are wanting, and how to frame them substantially, that good men may enjoy the freedom which they merit, and the bad the curb which they need. But to do this, and to know these exquisite proportions, the heroick wisdom, which is required, surmounted far the principles of these narrow politicians: what wonder, then, if they sink, as these unfortunate Britons before them, entangled and oppressed with things too hard, and generous above their strain and temper? for Britain, to speak a truth not often spoken, as it is a land fruitful enough of men stout and courageous in war, so is it, naturally, not over-fertile of men able to govern justly and prudently in peace, trusting only in their mother-wit; who con-



sider not justly, that civility, prudence, love of the publick good, more than of money or vain honour, are, to this soil, in a manner outlandish; grow not here, but in minds well implanted with solid and elaborate breeding, too impolitick else, and rude, if not headstrong and intractable to the industry and virtue either of executing, or understanding true civil government; valiant, indeed, and prosperous to win a field, but, to know the end and reason of winning, unjudicious and unwise; in good or bad success alike unteachable. For the sun, which we want, ripens wits, as well as fruits; and, as wine and oil are imported to us from abroad, so must ripe understanding, and many civil virtues be imported into our minds from foreign writings, and examples of best ages, we shall else miscarry still, and come short in the attempts of any great enterprise. Hence did their victories prove as fruitless, as their losses dangerous, and left them, still conquering, under the same grievances, that men suffer, conquered; which was indeed unlikely to go otherwise, unless men more than vulgar bred up, as few of them were, in the knowledge of ancient and illustrious deeds, invincible against many and vain titles, impartial to friendships and relations, had conducted their affairs; but then, from the chapman to the retailer, many, whose ignorance was more audacious than the rest, were admitted, with all their sordid rudiments, to bear no mean away among them, both in church and state.

From the confluence of all their errors, mischiefs, and misdemeanors, what in the eyes of man could be expected, but what befell those ancient inhabitants, whom they so much resembled, confusion in the end?

But on these things, and this parallel, having enough insisted, I return to the story which gave us matter of this digression.

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## THE BISHOP'S POTION :

OR,

### A DIALOGUE, BETWEEN THE BISHOP OF CANTERBURY AND HIS PHYSICIAN;

*Wherein he desireth the Doctor to have a Care of his Body, and to preserve him from being let Blood in the Neck, when the Sign is in Taurus.*

Printed in the Year 1641. Quarto, containing six Pages.

Canterbury,

**W**ELCOME, good Mr. Doctor?

*Doctor.* I understand, by one of your gentlemen, your grace was pleased to send for me?

*Cant.* Not without cause, good Mr. Doctor, for I find myself diseased in all parts, insomuch that, without some speedy remedy, I cannot long continue; I have a great desire to take physick, in case the time of the year be seasonable.

*Doct.* Yes, the time of the year may be seasonable, but we must have a care of the constitution of your lordship's body, the nature of the disease, and the quality of the medicine. Our cordials, potions, electuaries, syrups, plaisters, unguents, clysters, vomits, baths, suppositories, and the like, must be duly regarded, with a due care what planet is predominant.

*Cant.* I approve your learned skill, good Mr. Doctor, in having respect to the constellations, for I am of opinion, which the brethren, forsooth, call superstition, if I be let blood in the neck, when the sign is in *Taurus*, I shall certainly bleed to death.

*Doct.* That may very well be, unless your surgeon have a more saving skill than my lord deputy's had: but I pray, my Lord, let me see your Grace's water, for by it I shall easily perceive the state of your body?

*Cant.* Reach that urinal there: look you, Mr. Doctor, this water I made last night, after my first sleep; what do you think by it?

*Doct.* My Lord, your water is a most thick, dense, solid, heavy, almost ragged, putrid, stinking, and rotten urine; your Grace hath kept a very bad diet; there are certain raw crudities, that lie heavy and undigested upon your stomach, which will, without remedy, and that speedily, ascend so high, until it stifle and suffocate your Grace.

*Cant.* I pray, good Mr. Doctor, use your skill, in removing them; I must confess I owe a death, which I would be loth to pay, before it be due; wherefore, if it be within your power to prolong my life, spare no cost for the effecting it.

*Doct.* My Lord, it is within the power of my art to prolong your life, in case it be not cut off untimely. I have here prepared a vomit for your Grace, which, I doubt not, but will have a speedy operation; down with it, my Lord, fear not, it will bring something up by and by, and see, it begins to work already.

*Cant.* Hold my head, good Mr. Doctor, oh! oh!

*Doct.* Well done, up with it, my Lord: what is here? A great piece of parchment, with a yellow seal to it, the writing is obscure, I cannot read it: but what is this that comes next? A root of tobacco; I protest it is pure Spanish; how comes this to pass, had your Grace any hand in the tobacco patent?

*Cant.* Yes, it hath stuck on my stomach these four years at least, and I could never digest it before. Hold the bason.

*Doct.* What is this? A book, Whosoever hath been at church may exercise lawful recreations on the Sunday; what is the meaning of this?

*Cant.* It is the book for pastimes on the Sunday, which I caused to be made: but hold, here comes something, what is it?

*Doct.* It is another book, the title is, Sunday no Sabbath; Did you cause this to be made also?

*Canf.* No, Dr. Pocklington made it, but I licensed it.

*Doct.* What, he that looks so like a necromancer; he that was, for his pains, preferred besides his benefices? But what is this? A paper. It is, if I be not mistaken, a Star-chamber order against Mr. Prynne, Mr. Burton, and Dr. Bastwicke; had you any hand in that?

*Canf.* I had, I had, all England knoweth it: but, oh! here comes something that makes my very back ach; oh! that it were up once; now it is up, I thank Heaven? What is it?

*Doct.* It is a great bundle of papers, of presentations, and suspensions; these were the instruments, my Lord, wherewith you created the tongue-tied Doctors, and gave them great benefices in the country, to preach some twice a year at the least, and, in their place, to hire some journeyman curate, who will only read a sermon in the forenoon, and in the afternoon be drunk with his parishioners for company; and, with others, you silenced the long-winded ministers.

*Canf.* I must confess, it is true: but here is something that pains me extremely; oh! that it were up, this troubles me more than all the rest; see what it is, good Doctor, for it is up.

*Doct.* Why, my Lord, the book of canons, charged with the horrible monster.

*Canf.* Now I am pretty well at ease: but I pray, Mr. Doctor, what was this made of?

*Doct.* Why, my Lord, three ounces of tobacco, three scruples of pillory-powder, one scruple of his brains that looked over London-bridge, and three handfuls of the herbs gathered by the apprentices, wrapped up in a high commission roll, and boiled in a pottle of holy-water, to the third part, and strained through a pair of lawn sleeves.

*Canf.* Nay, if this be your physick, I will take no more of it: oh! there comes something else; I protest, the mitre; alas! I had almost broke my lungs.

*Doct.* Nay, if the mitre be come, the devil is not far off: farewell, good my Lord.

## A SPEECH

SPOKEN IN THE HOUSE OF COMMONS,

BY

The Reverend Father in God,

ROBERT, LORD BISHOP OF COVENTRY AND LITCHFIELD.

*Being brought to the Bar to answer for himself.*

London, printed by R. B. for Richard Lowndes, and are to be sold at his Shop without Ludgate, 1641. Quarta, containing six Pages.

*Master Speaker,*

AS it hath been ever my fashion (and, in truth, it is my disposition) to endeavour, at the least, to give satisfaction to every man, even to the meanest, that hath had any sinister conceptions of me, be it *scandalum datum*, or *acceptum*; so hath it been my ambition, and I have sought it with affection (as to all men) so much more to this honourable assembly, especially concerning the late petition and protestation exhibited unto his sacred Majesty, and the lords and peers in parliament. But, in the first place, Master Speaker, I am, as it becomes me, to give most hearty and condign thanks to the noble knights, citizens, and burgesses, of this honourable house of commons, for that they have been pleased, by a general vote, and, I hope, unanimous, to give me leave to speak for myself, and to lay open the truth of my cause, concerning the said petition and protestation before them.

And now, Master Speaker, to address myself to the business, whereof I shall not speak as a lawyer, for I have no head for law, neither shall I need to touch upon any point thereof; nor as a flourishing orator, as desirous to hear himself speak, I have long since laid aside my books of rhetorick: my desire is, Master Speaker, to tread in the steps of an old divine, of whom Sozomen writes in his ecclesiastical history, who, groaning under the like heavy burthen and accusation as I do, chose rather to vent his own sense, and express the truth of his cause in plain language, than to colour or cloak falsehood, and to extenuate his offence, by forced, trapped, and new varnished eloquence: and to that purpose, my conceptions and narration shall stand only upon two feet, negation and affirmation. There are some things that I must deny, and, yet justly, somewhat I must affirm, and that I shall do ingenuously and fully. First, for the negative: I never framed, made, nor contrived,

compiled, or preferred, any such petition or protestation; I never was at any meeting, consultation, or conference, about any such business; nay, I never heard of any intention, much less execution of any such thing, until it was the Wednesday in Christmas, being the 29th of December, at which time it was brought unto my house in Covent-garden, being betwixt six or seven at night (subscribed by eleven of my brethren) with a request, that I would subscribe suddenly also. And for the affirmation, presuming that so many learned, grave, and wise men, well versed in matters of that nature, would not have attempted any such thing, without good counsel, to the endangering of themselves, and their brethren, and to the distaste of the lords, and that all the rest of the bishops, in or about the cities of London or Westminster, should subscribe thereunto, and that it should not be preferred, without the approbation, and mature deliberation of good counsel, and of us all: I made the twelfth, and set to my hand, which I do now acknowledge, and never denied; nay, the first time that I came to the bar in the Lords house, I acknowledged that my hand was to it, and divers of this honourable presence heard it so read unto them, out of the journal of the lords house.

Now, Master Speaker, if these my deceived and deceiving thoughts (to use St. Bernard's phrase) have led me into an error, the error is either *Ex ignorantia juris*, an unskilfulness in the law, or *Debilitate judicii*, a weakness of my apprehension, or else *Ex nimia credulitate*, out of the too much confidence in others, not of any prepossessed malice, or out of a spirit of contradiction, as the Lord knoweth. The schoolmen tell me, that *Duo sunt in omni peccato*, there is *actio*, et *malitia actionis*; I own the action, the subscription is mine; but, that there was any malice in the action (to cross any vote, at which I was not present, nor never heard of) I utterly disavow.

And, therefore, Master Speaker, I shall become an humble suitor, that I may recommend three most humble requests, or motions, to this honourable house.

The first motion is, that you would be pleased to tread in the steps of Constantine, the Christian emperor, who had ever this resolution, that, if he should see *Sacerdotem peccantem*, an offending divine, he would rather cast his purple garment upon him, than reveal the offence, for the gospel's sake of Christ.

My second motion is, that, if my subscription shall make me a delinquent and worthy of any censure, then the censure may not exceed, but, at the highest, be proportionable to the offence.

The third and last motion is, that that of *Plautus* (after my fifty-eight years painful, constant, and successful preaching of the gospel of Christ in the kingdom of England, and in foreign parts) may not be verified of me: *Si quid bene feceris, levior pluma gratia est; si quid mali feceris, plumbeas iras gerunt*. And now, Master Speaker, I might here tender divers motions to the consideration of this honourable house, for favourable construction of my rash subscription; I may say commiseration, but all without ostentation; that is far from me; but rather for the consolation of my perplexed soul, for the great affliction, restraint, and disgrace, which I have long sustained (which is far greater, than



2. Constable: this officer is chosen by the inhabitants who are to be governed by him, and those of the place where his jurisdiction lieth, and presented unto the leet to be sworn.

3. Coroner: this officer hath jurisdiction within the whole county, and therefore was chosen by the freeholders of the county, in the county-court. Cook's Magna Charta, p. 174, 175, 559.

4. Such as had charge to punish such as were violaters of Magna Charta; these were chosen in the county-court, as appeareth by Stat. 28. Ed. I. c. 1. 17.

5. Sheriffs: were, in time past, and by the common law, to be chosen likewise in the county-court. Lamb. Saxon laws, fol. 136. stat. 28. Ed. I. c. 8, 13. Cook's Magna Charta, 175, 559. Mirror, p. 8.

6. Lieutenants of counties (anciently known by the name of *Heretoch*) were chosen in the county-court (which Cook upon Magna Charta, p. 69. calls the folkmete.) Lamb. Saxon laws, folio 136. Mirror, p. 8, 11, 12.

7. Majors and bayliffs, in boroughs and towns corporate, are chosen by the commonalty of the same corporation within their jurisdiction.

8. Conservators of the peace were anciently chosen by the freeholders in the county-court. Cook's Magna Charta, 558, &c.

9. Knights for the parliament are to be chosen in the county-court, stat. 7. H. IV. cap. 15. 1. H. V. 1. 8. H. VI. cap. 7. 10. H. VI. cap. 2.

10. Verderers of the forest are chosen within their jurisdiction, by the inhabitants. Cook's Magna Charta, 559.

11. Admirals, being the sheriffs of the counties, as Selden in his *Mare Clausum*, p. 169, 188, affirms, must be chosen as the sheriffs were, viz. in the county-court. But the parliament of R. II. folio 29, saith, they are chosen in the parliament, the representative body of the realm, because they had the defence of the realm by sea committed unto them.

12. The captain of Calais, viz. Richard Earl of Warwick, in the time of Henry VI. refused to give up his captainship of Calais unto the king, because he received it in parliament. Cowel's interpreter in the word Parliament.

13. The lord chancellor: to whom is committed the great seal of England, being the publick faith of the kingdom, was in former times chosen in parliament. Lamb. Archeion, p. 48. Dan. Chronicle, p. 139, 148, 195.

14. Lord treasurer: an officer to whom is of trust committed the treasure of the kingdom, was, in like manner, chosen in parliament.

15. Chief justice: an officer unto whom is committed the administration of the justice of the realm, was chosen in parliament. Lamb. Archeion, p. 48. *ut supra*.

Anno 15. Ed. III, the king was petitioned in parliament, that the high officers of the kingdom might, as in former times, be chosen in parliament. To which the king yielded, that they should be sworn in

parliament. Dan. Chronicle, p. 195. *Quare* the parliament roll and petitions.

And it appeareth, by a printed statute, *Anno* 15 Ed. III. cap. 3. that the great officers of the kingdom were sworn to maintain Magna Charta.

16. The great council of the king and kingdom, namely, the parliament, is chosen by the commons; for they choose the knights and citizens, and burgesses, or barons, for so the citizens were anciently called; and the cinque-ports retain that name to this day.

And this was, as I conceive, the ancientest constitution of the kingdom, for choosing of their officers.

In the next place, it will be requisite to inquire, which of these officers are now altered, and by what authority. And, first, of sheriffs:

The choice of sheriffs was first taken from the freeholders by the statute of 9 Edward II, and the choice of them committed to the lord chancellor, treasurer, the barons of the exchequer, and the justices of either bench. Cook's Magna Charta, p. 559.

This election is to be made the morrow after All Souls Day in the exchequer, by statute 14 Edward III. c. 7.

*Quare* 1. If they choose none at that day and place, but at some other time, whether the choice be good? Or if he be chosen by any other?

*Objection.* The king himself doth usually make and appoint sheriffs in every county by his prerogative.

*Solution.* It hath been agreed by all the judges, that the king cannot appoint any other to be sheriff, than such as are named and chosen according to the statute of Lincoln. Cook's Magna Charta, p. 559.

If so, then it is questionable, whether the making of Mr. Hastings sheriff of Leicestershire be warrantable by law, or not?

*Quare* 2. If no sheriff be legally chosen, whether the freeholders of the county shall not choose one, as they were accustomed, before the making of the stat. of 9 Ed. II for these reasons.

1. If there be no sheriff legally chosen, there will be a failure of justice, which the law will not permit.

2. Because the statute is in the affirmative, and therefore doth not altogether take away their power of choosing, because affirmative statutes do not alter the common law.

Next, let us consider the choice of justices of the peace, who, as they are commissioners of the peace, are not officers by the common law; and, therefore, this case will differ in some respects from the former, it being an office created by statute.

1. I conceive that no court may be erected without the authority of parliament: for the court of First Fruits was erected by stat. 32 Henry VIII. cap. 45. the Court of Wards by stat. 32. Henry VIII. cap. 46.



the Court of Justice in Wales by stat. 34. H. VIII. c. 26. And power to erect courts given 1 Mar. sess. 2. cap. 10. And it was resolved in this parliament, at the trial of the Earl of Strafford, that the court at York was against law, albeit it hath had continuance these hundred years, because it was not erected by parliament.

And justices of the peace, being judges of record, were first ordained by statute, as appeareth by 18 Ed. III. cap. 2, and 34 Ed. III. cap. 1, with such other additions of power, as later statutes have given unto them.

Justices of peace then having their being by vertue of the statute-law, they are to be ordained in the same manner as the statutes prescribe, and not otherwise :

1. After their first institution, the statutes did leave the choice of them indefinitely in the crown, as I conceive, until the statute of 12 R. II. 27, which statute doth instruct the chancellor, treasurer, keeper of the privy-seal, steward and chamberlain of the king's house, the clerk of the rolls, the justices of both benches, barons of the exchequer, and others, to name and make them.

2. Other statutes do appoint what persons shall be chosen to be justices of the peace; namely, such as reside in the same county where they are justices of peace, as stat. 12. R. II. c. 10. And they must be of the most sufficient knights, esquires, and gentlemen of the same county, stat. 17. Rich. II. 10. and dwelling in the same county, 2 H. V. stat. ii. cap. 1. (except lords, and justices of assizes) upon this last statute, it may be doubted if choice may be made of any lords, and justices of assizes, which have no residence, or estate, in the county where they are so made justices of the peace; which, if it doth, it doth repeal all former statutes, which confines them to such persons as are of the same county; which I conceive is against their meaning, for that statute doth only dispence with the residence of lords and justices of assize, because men of the same county, inhabiting in the county where they are justices of peace, in regard of their other employments in the commonwealth, which necessarily requireth their absence, and so it amounteth only to a dispensation for their residency.

*Objection.* The common practice is, that the lord keeper doth appoint whom he pleases, and that by vertue of the statute of 18 Henry VI. cap. 1.

*Solution.* True! such is the practice; but the doubt is, how warrantable his act is? for the statute of 18 H. VI. doth give the lord chancellor (alone by himself) no other power, but in case there be no men of sufficiency in the county, and where none of twenty pounds per annum are to be found. For, in such case, he hath power to appoint such as he conceives are men most fit. But, in case there are men of sufficient estates in the county to be found, he must join with the others mentioned in the statute, viz. the treasurer, privy-seal, &c. who have a joint and undivided power with him.

If this be so, then it may be doubted, whether the lord viscount Faulkland, being no peer of the realm, Sir Peter Miche, Sir Edward Nichols, of late put into the commission of the peace, in many counties

\*If this kingdom, are, by the law, capable of being justices of the peace in those counties where they do not reside? *Et sic de similibus.*

Quære also, whether a justice of the peace, being once legally chosen according to the statute beforementioned, may be put out at the pleasure of the lord keeper alone, without any just cause alledged, for being a justice of record, whether some matter of record must not appear to disable him? for, being settled by law, he is to be displaced by law, and not upon displeasure or surmise.

3. A third office is, the lieutenants in every county, in former times known (for the name only is out of use) by the name of Heretoch, Lamb. Saxon Laws, fol. 136. And here will fall into debate the ordinance in parliament, about the settling of the militia of the kingdom.

The choice of these, as was formerly mentioned, was by the freeholders in the county-court: but, of later times, they have exercised the same power, being appointed by the king, under the shadow of his prerogative.

First, it is to be demanded, whether the king's prerogative can take away that ancient right, which the subjects had, by law, invested in them? If so, then the king, by his prerogative, may do wrong, which is contrary to a maxim in law. *Fortescue de Legibus*, &c. fol. 25. If not, then whether the power of choosing a lieutenant, or Heretoch, doth not yet remain in the subject, so as they may now choose one as well, and by the same right they did in former times?

If freeholders of a county may yet choose, then I conceive the parliament, being the representative body of the whole kingdom, may appoint lieutenants; because they include them, or, at least, they are not excluded from such a power, no more than where the statute, giving power unto justices of peace to inquire of a riot, doth exclude the power of the king's bench, which no man will affirm. And therefore the ordinance of the militia is legal.

That the parliament hath power to make an ordinance, may be proved *A minori*. For,

If the inhabitants of a town, without any custom to inable them, may make an ordinance, or bye law, for the reparation of their church, highway, or bridge in decay, or any the like thing, being for their publick good, and upon a pecuniary pain, in case of neglect, and if it be made by the greater part, that it shall bind all within the town, as hath been agreed for law, 44 Ed. III. fol. 19. Cook. Lib. V. fol. 63, the Chamberlain of London's case, Clarke's case, and Jefferyes's case, *ibid.* fol. 64, 65.

If a township be amerced, and the neighbours, by assent, shall assess a certain sum upon every inhabitant, and agree, that if it be not paid by such a day, that certain persons, thereto assigned, shall distrain; and, in this case, the distress is lawful. Doctor and Student, fol. 74, 6, cap. 9.

If a bye law, that every one that holdeth land shall pay one penny towards the reparation of a church, and, for non-payment, shall forfeit to the churchwardens twenty shillings, be good and doth bind, as the book saith, 21. H. VII. fol. 20. holdeth.



If a town make bye laws, and they shall bind every one of the town, if it be for the common good, as 11 H. VII, fol. 14, then, by the same reason, may the parliament make ordinances, and bye laws, for the common good of the kingdom, as shall bind all. For, if a town may make ordinance, much more may the knights and burgesses of the parliament, because they have their power *ad faciendum et consentiendum*; as appeareth of record under their hands, and seals in chancery, in their return of their several elections for knights and burgesses.

Lastly, as every private man is, by law, bound to preserve the peace; as in case an affray be made by two, and a third man standing by shall not use his best endeavour to part them, and preserve the peace, he may be indicted and fined for it: why may not the parliament, being intrusted with the preservation of the peace of the realm, make an ordinance for the preservation of the peace in case of apparent danger?

Ordinance made in parliament 8 Ed. II, for the preservation of the alienation of the king's land, and fines set upon such as presume to break them. Rot. Parl. 28 H. VI. Art. 29.

The judges and courts at Westminster may make an ordinance, for fees to be paid unto the clerk of their courts, and for bar fees taken by sheriff and gaolers, 21 H. VII. fol. 17.

An ordinance made in parliament, 21 Ed. III, fol. 60, for exemption of the abbot of Bury from the jurisdiction of the bishop of Norwich. Selden's Titles of Honour, page 702, 12 H. VII, fol. 25.

Heyborne and Keylond's case, M. 14 Ed. IV, Rot. 60, in Banco Reg. Crook, page 25, who had his money taken away from him by vertue of an ordinance, and was adjudged, that the ordinance did bind him.

Whether an infant may be a colonel, admiral, &c.?

1. None, by the intention of the law, can do knights service, before he be twenty-one years of age. And this is the reason of wardship.
2. It is an office of trust, which may not be executed by a deputy.
3. Such an office requires personal attendance, for, otherwise, the county may be otherthrown unawares, in the absence of such a governor from his charge.

AN ARGUMENT OF LAW,  
CONCERNING  
THE BILL OF ATTAINDER OF HIGH TREASON  
OF  
THOMAS EARL OF STRAFFORD:

At a Conference in a Committee of both Houses of Parliament.

BY MR. ST. JOHN,

His Majesty's Solicitor General.

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*My Lords,*

THE knights, citizens, and burgeses of the commons house of parliament have passed a bill for the attainting of Thomas, Earl of Strafford, of high treason. The bill hath been transmitted from them to your lordships. It concerns not him alone, but your lordships and the commons too, though in different respects.

It is to make him as miserable a man, as man or law can make him.

Not loss of life alone, but with that of honour, name, posterity, and estate; of all that is dear to all.

To use his own expression, an eradication of him both root and branch, as an Achan, a troubler of the state, as an execrable, as an accursed thing.

This bill, as it concerns his lordship the highest that can be in the penal part, so doth it, on the other side, as highly concern your lordships and the commons, in that which ought to be the tenderest, the judicatory within, that judge not them who judge him; and, in that which is most sacred amongst men, the publick justice of the kingdom.

The kingdom is to be accounted unto for the loss of the meanest member, much more for one so near the head.

The commons are concerned in their account for what is done, your lordships in that which is to be done.

The business, therefore, of the present conference is to acquaint your lordships with those things that satisfied the commons in passing of this bill; such of them as have come within my capacity, and that I can remember, I am commanded from the commons, at this time, to present unto your lordships.

My lords, in judgments of greatest moment, there are but two ways for satisfying those that are to give them; either the *lex lata*, the law

already established, or else, the use of the same power for making new laws, whereby the old at first received life.

In the first consideration of the settled laws; In the degrees of punishment, the positive law received by general consent, and for the common good, is sufficient to satisfy the conscience of the judge, in giving judgment according to them.

In several countries, there is not the same measure of punishment for one and the same offence. Wilful murder in Ireland is treason, and so is the wilful burning of a house, or stack of corn. In the isle of Man, it is felony to steal a hen, but not to steal a horse; and yet, the judge in Ireland hath as just a ground to give judgment of high treason, in those cases, there, as here to give judgment only of felony; and in the isle of Man, of felony for the hen, as here of petty larceny.

My lords, in the other consideration of using the supreme power, the same law gives power to the parliament to make new laws, that inables the inferior court to judge according to the old. The rule that guides the conscience of the inferior court is from without, the prescripts of the parliament, and of the common law; in the other, the rule is from within: That *satus populi* be concerned: That there be no wilful oppression of any the fellow members: That no more blood be taken, than what is necessary for the cure: The laws and customs of the realm as well inable the exercise of this, as of the ordinary and judicial power.

My lords, what hath been said, is, because that this proceeding of the commons, by way of bill, implies the use of the mere legislative power, in respect new laws are, for the most part, passed by bill.

This, my lords, though just and legal, and, therefore, not wholly excluded, yet it was not the only ground that put the commons upon the bill; they did not intend to make a new treason, and to condemn my Lord of Strafford for it; they had in it other considerations likewise, which were to this effect:

First, The commons knew, that, in all former ages, if doubts of law arose upon cases of great and general concernment, the parliament was usually consulted withal for resolution, which is the reason, that many acts of parliament are only declarative of the old law, not introductive of a new, as the great charter of our liberties; the statute of 25. Edw. III. of treasons; the statute of the prerogative; and, of late, the petition of right. If the law was doubtful in this case, they conceived the parliament (where the old may be altered, and new laws made) the fittest judge to clear this doubt.

Secondly, My lords, they proceeded this way to out those scruples and delays, which, through disuse of proceedings of this nature, might have risen in the manner and way of proceeding, since the statute of 1. Henry VI. cap. xvii. and more fully in the roll, number 144. The proceedings in parliament have usually been upon an indictment first found; though in cases of treason, particularly mentioned in the statute of 25 Edw. III. which had not been done in this case; Doubts likewise might rise for treasons, not particularly mentioned in the statute of 25 Edw. III. Whether the declaratory power of parliament

be taken away; and, if not taken away, in what manner they were to be made, and by whom? They find not any attainders of treason in parliament for near this two hundred years, but by this way of bill. And again, they knew that whatsoever could be done any other way, it might be done by this.

Thirdly, In respect of the proofs and depositions that have been made against him; for, First, Although they knew not, but that the whole evidence which hath been given at the bar, in every part of it, is sufficiently comprehended within the charge; yet, if therein they should be mistaken, if it should prove otherwise, use may justly be made of such evidence in this way of bill, wherein, so as evidence be given in, it is no way requisite that there should have been any articles or charge at all. And so in the case of double testimony, upon the statute of 1. Edw. VI. Whether one direct witness, with others, to circumstances, had been single or double testimony; and, although single testimony might be sufficient to satisfy private consciences, yet how far it would have been satisfactory in a judicial way, where forms of law are more to be stood upon, was not so clear; whereas, in this way of bill, private satisfaction to each man's conscience is sufficient, although no evidence had been given in at all.

My lords, the proceeding by way of bill, it was not to decline your lordships justice in the judicial way: In these exigencies of the state and kingdom, it was to husband time; by silencing those doubts, they conceived it the speediest and the surest way.

My lords, these are, in effect, the things the commons took into their consideration, in respect of the manner and way of proceeding against the earl. In the next place, I am to declare unto your lordships the things they took into their consideration, in respect of the matter and merits of the cause; they are comprehended within these six heads:

1. That there is a treason within the statute of 25 Edw. III. by levying of war upon the matter of the fifteenth article.

2. If not by actual levying of war, yet, by advising and declaring his intention of war, and that by Savill's warrant, and the advice of bringing over the Irish army, upon the matter of the twenty-third article, the intending of a war, if not within the clause of levying war in the statute of 25 Edw. III. yet, within the first treason of compassing the death of the king.

3. If neither of these two single acts be within the statute of 25. Edw. III. yet, upon putting all together, which hath been proved against him, that there is a treason within the first clause of compassing the death of the king:

*Et, si non prosunt singula, juncta juvant.*

4. That he hath assessed and laid soldiers upon the subjects of Ireland against their will, and at their charge, within the Irish statute of 18. Hen. VI. That both person and thing are within the statute, that the statute remains in force to this day, that the parliament here hath cognisance of it, and that even in the ordinary way of judicature;



that, if there be a treason and a traitor, the want of jurisdiction, in the judicial way, may justly be supplied by bill.

5. That his endeavouring to subvert the fundamental laws and government of the realms of England and Ireland, and, instead thereof, to introduce a tyrannical government against law, is treason by the common law. That treasons at the common law are not taken away by the statutes of 25 Edw. III. 1 Hen. IV. cap. x. 1 Mar. cap. 1, nor any of them.

6. That, as this case stands, it is just and necessary to resort to the supreme power in parliament, in case all the rest should fail.

Of these six, five of them are treason, within the compass of the laws already established; three within the statute of 25 Edw. III. one within the Irish statute, the other by the common law of England.

If but any one of these six considerations hold, the commons conceive that, upon the whole matter, they had good cause to pass the bill.

The case, 1. My lords, for the first of levying war, I shall make bold to read the case to your lordships before I speak to it; it is thus:

The earl did by warrant under his hand and seal give authority to Robert Savill, a serjeant at arms, and his deputies, to sess such a number of soldiers, horse and foot, of the army in Ireland, together with an officer, as the serjeant should think fit, upon his Majesty's subjects of Ireland against their will: This warrant was granted by the earl, to the end to compel the subjects of Ireland to submit to the unlawful summons and orders made by the earl upon paper petitions exhibited unto him, in case of private interest between party and party; this warrant was executed by Savill and his deputies, by sessing of soldiers, both horse and foot, upon divers of the subjects of Ireland, against their will, in a warlike manner; and at divers times the soldiers continued upon the parties upon whom they were sessd, and wasted their goods, until such time as they had submitted themselves unto those summons and orders.

My lords, this is a levying of war within the statute of 25 Edw. III. The words of the statute are, 'If any man do levy war against our lord the king in his realm,' this is declared to be treason.

I shall endeavour in this to make it appear to your lordships,

1. What shall be a levying of war, in respect of the motive or cause of it.

2. What shall be said a levying of war, in respect of the action or thing done.

3. And, in the third place, I shall apply them to the present case.

It will be granted in this of levying of war, that forces may be raised, and likewise used, in a warlike manner, and yet no levying of war within the statute, that is, when the forces are raised and employed upon private ends either of revenge or interest.

Before this statute in Edw. I's time, the title of a castle was in difference between the Earls of Hereford and Gloucester; for the maintaining of the possession on the one side, and gaining of it on the other, forces were raised on either side of many hundred men; they marched with banners displayed one against the other. In the parlia

ment in the twentieth year of Edw. I. this was adjudged only trespass, and either of the earls fined a thousand marks a-piece.

After the statute in Hilary term, the fiftieth year of Edward the Third, in the King's-bench, Rot. 3. Nicholas Huntercome, in a warlike manner, with forty men armed, amongst other weapons, with guns, so ancient as appears by that record they were, did much spoil in the manor of the abbey of Dorchester, in the county of Oxford: This was no treason: So it hath been held by the judges, that, if one or more townships, upon pretence of saving their commons, do, in a forcible and warlike manner, throw in inclosures; this is only a riot, no treason.

The words of the statute of 25 Edw. III. clear this point, that if any man ride armed openly or secretly with men at arms against any other to kill and rob, or to detain him until he hath made fine and ransom for his deliverance; this is declared not to be treason, but felony or trespass, as the case shall require; all the printed statutes which have it 'covertly or secretly' are misprinted; for the words in the parliament roll, as appears in num. 17, are *discoverment ou secretement*, openly or secretly.

So that, my lords, in this of levying war, the act is not so much to be considered, but, as in all other treasons and felonies, *quo animo*, with what intent and purpose.

*Object.* My lords, if the end be considerable in levying war, it may be said, that it cannot be a treason war, unless against the king: For the words of the statute are, 'If any man levy war against the King.'

*Ans.* That these words extend further than to the person of the king appears by the words of the statute, which in the beginning declare it to be treason to compass and imagine the king's death, and, after other treasons, this is to be declared to be treason, to levy war against the king. If the levying of war extend no further than to the person of the king, these words of the statute are to no purpose, for then the first treason of compassing the king's death had fully included it before, because that he, which levies war against the person of the king, doth necessarily compass his death.

It is a war against the king, when intended for alteration of the laws or government in any part of them, or to destroy any of the great officers of the kingdom. This is a levying of war against the king.

1. Because the king doth protect and maintain the laws in every part of them, and the great officers to whose care he hath in his own stead delegated the execution of them.

2. Because they are the king's laws. He is the fountain from whence, in their several channels, they are derived to the subject; all our indictments run thus, Trespasses laid to be done, *Contra pacem Domini Regis*, the king's peace, for exorbitant offences, though not intended against the king's person, against the king's crown and dignity.

My lords, this construction is made good by divers authorities of great weight, ever since the statute of 25 Edw. III. downwards.

In Richard the Second's time, Sir Thomas Talbot conspired the death of the Dukes of Gloucester and Lancaster, and some other of



the peers; for the effecting of it, he had caused divers people in the county of Chester to be armed in a warlike manner, in assemblies. In the parliament held the seventeenth year of Richard the Second, number the 20th, Sir Thomas Talbot was accused of high treason for this; it is there declared, that, insomuch as one of them was lord high steward of England, and the other high constable of England, that this was done in destruction of the estates of the realm, and of the laws of the kingdom; and therefore adjudged treason; and the judgment sent down into the King's-Bench, as appears, Easter term in the seventh year of Richard the Second, in the King's-Bench, Rot. 16. These two lords had appeared in the eleventh year of Richard the Second, in maintenance of the act of parliament made the year before; one of them was of the commissioners appointed by parliament, and one of the appellors of those that would have overthrown it: The Duke of Lancaster likewise was one of the lords that was to have been indicted of treason for endeavouring the maintenance of it, and therefore conspiring of their deaths is said to be in destruction of the laws; this is there declared to be a treason that concerned the person of the king and the commonwealth.

In that great insurrection of the villains and meaner people, in Richard the Second's time, they took an oath, *Quod Regi et Communibus fidelitatem servarent*, to be true to the king and commons, that they would take nothing but what they paid for, and punished all theft with death; here is no intendment against the person of the king, the intent was to abolish the law of villainage and servitude, to burn all the records, and to kill the judges; this, in the parliament of the fifth year of Richard the Second, numbers the one and thirtieth and two and thirtieth, the first part, is declared to be treason against the king and against the law.

In the eleventh year of Richard the Second, in parliament, the raising of forces against the commissioners appointed by act of parliament, the year before, was adjudged treason by all the Judges.

The statute of 1 Mar. Cap. xii. enacts, that, if twelve or more shall endeavour by force to alter any of the laws and statutes of the kingdom, they shall, from such a time there limited, be adjudged only as felons; this act was to continue but to the next parliament; it is expired; it shews by the word *only*, that the offence was higher before the making of it.

My lords, in queen Elisabeth's time, Grant and divers apprentices of London, to the number of two-hundred, rose and assembled at Tower-hill, and carried a cloke upon a pole instead of a banner; their intent was to deliver divers apprentices out of prison, that had been committed upon a sentence in the Star-chamber for riots, to kill the Lord Mayor of London, and for setting prices on victuals. In Trinity Term, 27 Elis. divers of the judges were consulted withal, and resolved that this was a levying of war against the queen, being intended against the government and officers of the queen, and thereupon Grant and others were executed as traitors.

Afterwards, in that queen's time, divers of the county of Oxford consulted together, to go from house to house in that county, and thence

to London, and other parts, to excite them to take arms, for the throwing in of all inclosures throughout England; nothing was done, nor no assembly. The statute of 13 Elis. cap. i. during the queen's life, made it treason to intend or advise to levy war against the queen.

In Easter Term, 39 Elis. all the judges of England met about the case. It was resolved by them, that this was a war intended against the queen: they agreed, that, if it had been of one township, or more, upon private interest and claim of right of common, it had not been treason; but this was to throw in all inclosures through the kingdom, whereto these parties could pretend no claim; that it was against the law, in regard that the statute of Merton gave power of inclosures in many cases. Upon this resolution, Bradshaw and Burton were executed at Aynestow-hill in Oxfordshire, the place where they intended their first meeting.

So that, my lords, if the end of it be to overthrow any of the statutes, any part of the law and settled government, or any of the great officers intrusted with execution of them; this is a war against the king.

My lords, it will be further considerable, what shall be accounted a levying of war in respect of the actions and things done. There is a design to alter some part of the laws and present government: for the effecting thereof people are provided with arms, and gathered together into troops, but afterwards march not with banners displayed, nor do *bellum percutere*: Whether the arming themselves and gathering together upon this design, whether this be a war, or such prosecution of the design with force, as makes it treason within the statute?

First, If this be not a war, in respect that it necessarily occasions hostile preparations on the other side?

Secondly, From the words of the statute shall levy war, and be thereof probably attainted of open deed by people of their condition, although the bare conspiring be not an open deed, yet whether the arming and drawing men together be not an open declaration of war?

In Sir Thomas Talbot's case, before cited, in the seventeenth year of Richard the Second, the acts of force are expressed in the parliament roll: That he caused divers of the people of the county of Chester to be armed in a warlike manner in assemblies; here is no marching, no banners displayed.

In the eighth year of Henry the eighth, William Bell and Thomas Lacy in Com' Cant. conspired with Thomas Cheney, called the Hermit of the queen of fairies, to overthrow the laws and customs of the realm; and, for the effecting of it, they, with two-hundred more, met together, and concluded upon a course of raising greater forces in the county of Kent, and the adjacent shires; this was adjudged treason; these were open acts.

My lords, for the application of both these to the case in question:

First, in respect of the end of it, here was a war against the king: it was to subvert the laws; this being the design, for the effecting of it, he assumed to his own person an arbitrary power over the lives, liberties, and estates of his majesty's subjects, and determined causes upon paper petitions at his own will and pleasure, obedience must be forced by the army; this is declared by the warrant.



My lords, if it be said, That the warrant expresseth not any intent of subverting the laws, it expresseth fully one of the principal means whereby this was to be done, that is, obedience to his arbitrary orders upon paper petitions; this was done in reference to the main design.

In the cases of the town of Cambridge and Sir William Cogan, that have formerly been cited to your lordships, upon other occasions, the things in themselves were not treason, they were not a levying of war.

In that of Cambridge, the town met together, and, in a forcible manner, broke up the university treasury, and took out of it the records and evidence of the liberties of the university over the town.

In the other, they of Bridgewater marched to the hospital, and compelled the master of the hospital to deliver unto them certain evidences that concerned the town, and forced him to enter into a bond of two hundred pounds.

These, if done upon these private ends alone, had not been treason, as appears by the very words of the statute of 25 Edw. III. before-mentioned of marching openly or secretly.

But, my lords, these of Cambridge and Bridgewater, they were of the conspiracy with the villains, as appears in the parliament roll of the first year of Richard the Second, number the one and thirtieth, and two and thirtieth, where the towns of Cambridge and Bridgewater are expressly excepted out of the general pardon made to the villains. This being done in reference to that design of the villains, of altering the laws; this was that which made it treason.

If the design went no further than the forcing obedience to these paper orders made by himself, it was sufficient, it was to subvert one fundamental part of the laws; nay, in effect, the whole law. What use of law, if he might order, and determine, of men's estates at his own pleasure? This was against the law notoriously declared in Ireland.

In the close roll in the Tower, in the five and twentieth year of Edw. I. a writ went to the justices in Ireland (that kingdom at that time was governed by justices) declaring, that upon petitions they were not to determine any titles between party and party, upon any pretence of profit whatsoever to the king.

In the eight and twentieth year of Henry the Sixth, the second chapter, suits in equity, not before the deputy but in chancery; suits at common law, not before him, but in cases of life in the king's-bench; for title of land or goods, in the proper courts of the common-pleas or king's-bench.

This declared in the instructions for Ireland in the latter end of king James's time, and by the proclamation in his majesty's time, my lord took notice of them, and called the commissioners narrow-hearted commissioners.

The law said, he should not thus proceed in subversion of it; he saith, he will, and will force obedience by the army. This is as much in respect of the end, as to endeavour the overthrow of the statutes of labourers, of victuals, or of Merton for inclosures. Here is a war against the king, in respect of the end.

2. In respect of the actions, Whether there be either a levying of war, or an open deed, or both?

My lords, there was an army in Ireland at that time of two thousand horse and foot; by this warrant there is a full designation of this whole army, and an assignment of it over unto Savill for this purpose. The warrant gives him power, from time to time, to take as many soldiers, horse and foot, with an officer, throughout the whole army, as himself shall please; here is the terror and awe of the whole army to force obedience. My lords, if the earl had armed two thousand men, horse and foot, and formed them into companies to this end, your lordships would have conceived that this had been a war; it is as much as in the case of Sir Thomas Talbot, who armed them in assemblies.

This is the same with a breach of trust added to it. That army was first raised, and afterwards committed to his trust for defence of the people, but is now destined by him to their destruction. This assignation of the army, by his warrant under his hand and seal, is an open act.

My lords, here is not only an open act done, but a levying of war; soldiers both horse and foot, with an officer, in a warlike manner sessed upon the subject, which killed their cattle, consumed and wasted their goods.

*Obj.* O, but five or six were the most employed at any time; a mighty war of six men, scarce a riot.

*Ans.* Your lordships observe a great difference where six single men go upon a design alone, and when sent from an army of six-hundred, all engaged in the same service; so many were sent as were sufficient to execute the command; if upon a poor man fewer, more upon a rich; if the six had not been able, the whole army must make it good: The reason that the sheriff goes alone, or but with one bailiff, to do execution, is, because he hath the command of the law, the king's writ, and the *posse comitatus*, in case of resistance; here is the warrant of the general of an army, here is the *posse exercitus*, the power of the army; under this awe of the whole army, six may force more than sixty without it; and although never above six in one place, yet in the several parts of the kingdom at the same time might be above sixty; for sassing of soldiers was frequent, it was the ordinary course for execution of his orders.

The lord lieutenant of a county in England hath a design to alter the laws and government; nay, admit the design goes not so high, he only declares thus much, that he will order the freeholds and the estates of the inhabitants of the county at his own will and pleasure, and doth accordingly proceed upon paper petitions, foreseeing there will be disobedience; he grants out warrants under his hand and seal to the deputy-lieutenants and captains of the train-bands, that, upon refusal, they shall take such numbers of the train-bands through the county, with officers, as they shall think good, and lay them upon the lands and houses of the refusers; soldiers in a warlike manner are frequently sessed upon them accordingly. Your lordships do conceive that this is a levying of war within the statute.

The case in question goes further in these two respects: